From Back Alley to the Border: Criminal Abortion in California, 1920-1969

By

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To my family

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Preface

I came across this topic while in the process of writing what I thought would be a very different dissertation. At the California State Archives in Sacramento, I poured over physician license revocation files in hopes of developing a dissertation about Southern California physicians in the postwar period. Since I forgot to request archivist permission, I was left to review much earlier documents because of my inability to access records under within the 75-year restriction. I was initially disappointed, but tried not to stress about it. The first day at the archive, I noticed a number of documents with the phrases "criminal operation" and "illegal operation." I was intrigued. I quickly discovered these terms referred to abortions, and followed that thread until I found documents related to the Pacific Coast Abortion Ring (PCAR). At the end of my first day, I emailed William Deverell and asked if he knew anything about PCAR. He said he did not, and he encouraged me to find out everything I could.

The rest of my week at the State Archives I pulled new records and gathered as much information as I could. After another trip to Sacramento, and after requesting permission to access restricted files in advance, I was able to see the rest of the documents. The timing for this dissertation became more significant with the recent surge of conservative efforts to eliminate women's access to safe, legal abortion. Like the other scholars who wrote on the history of abortion in the 1970s and 1990s, we are again in a critical moment in the history of women's reproductive rights. We are again at a crossroads in the legal history of abortion, and perhaps at the beginning of a new period in its history in the United States—recriminalization.

Introduction

> Every person who provides, supplies, or administers to any woman, or procures any woman to take any medicine, drug, or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the State prison not less than two nor more than five years—Laws of the State of California, *Statutes and Amendments to the Codes*, 1935, Section 274.

In October 1961, Mrs. Eleanor MacDonald of Long Beach, California went to Tijuana, Mexico in order to procure an illegal abortion.[1] The waitress was already a mother of three when she discovered she was pregnant again. Despite the fact that abortions were illegal in California, some women were able to acquire them when their private physicians determined they were *therapeutically* necessary. Abortions were illegal in Mexico, too, but the desire for this procedure sparked a thriving black market, and American women went south in search of what they could not easily find in the United States. To many Americans, Mexico was a haven for American debauchery. Just as Americans in the early twentieth century crossed the national border into Mexico to pursue illicit activities like gambling and prostitution, American women crossed the border in order to obtain illegal abortions. Because MacDonald did not pursue her legal options in Long Beach, it is unlikely that she had an existing condition or the financial resources to negotiate a "legal" abortion. Had her situation been otherwise, her story would have likely remained a closeted secret. Known only to herself, her physician, and her partner.

The events of the day went something like this: MacDonald and a friend drove 125 miles to Tijuana. They returned to Long Beach after the procedure and Mrs. MacDonald immediately fell ill. Her condition worsened. It is not clear who took Mrs. MacDonald to the hospital but what is clear is that it was too late. She died shortly thereafter. When the physicians performed an autopsy, they realized the abortionist had only removed the head of the fetus. An investigator

[1] Name changed.

described the scene as "repugnant . . . beyond the decency of description."[2] If MacDonald had had a *therapeutic* abortion in a Southern California hospital she would have received a standard, hygienic medical procedure—overseen by licensed physicians and nurses with hospital oversight. But she did not have an abortion in a California hospital. Instead, she chose to cross a national border and take her chances in a medical Wild West. Why?

From Back Alley to the Border is a social history of a medical procedure—abortion—in the American west. It traces the history of illegal abortion in California from the proverbial "back alley" to the U.S.-Mexico border where increasing numbers of American women sought their abortions after 1953. Despite the emergence of the abortion specialist in the 1920s and 1930s, very little had changed for American women who sought abortions in the 1960s. MacDonald became an unfortunate statistic, and a victim of California's imprecise and ambiguous abortion law—a law that compelled women to seek their abortions in Tijuana in order to avoid government intrusion in their personal lives. Only when the realities of the medical black market in Southwest border cities became visible did everyday Americans see the risks that women undertook in order to terminate their unwanted pregnancies. Only when the use of more accessible—yet *potentially* dangerous—abortions across the border grew dramatically did Californians realize the need to liberalize their existing abortion laws.

In this dissertation I trace the story of abortion in California from the early twentieth century through 1969, when the California Supreme Court found the state's abortion statute "void for vagueness" in *People v. Belous*. I focus, specifically, on the rise and fall of a notorious abortion ring popular in the waning years of the Great Depression—the Pacific Coast Abortion Ring (PCAR)—and illuminate the role this organization played in the penalization of abortion

[2] Joel M. Taylor, Special Agent, Bureau of Criminal Identification and Investigation Report, California Department of Justice, March 14, 1962, State Board of Medical Examiners, Abortion Investigative Files, Tijuana, F3760:821, California State Archives, Sacramento, California.

providers and recipients in the years before decriminalization.[3] For most women during this period of study, abortion was simply another method of birth control, albeit a last-resort means of birth control. However, contraception—discussions about it, access to it, concerns with it—cannot be isolated from its social context. As such, I work within the tradition of historians who have discussed how race, gender, and sexuality inform California's politics, infrastructure, and everyday life, and I document how the professional medical community and society shape discussions about reproduction and contraception. Indeed, California's location—particularly its geographic continuity with Mexico—has made it a unique site in the history of race, sex and politics. Additionally, its role as the first state to decriminalize abortion makes it an important site in the history of abortion nationally.

In the more than one hundred years of abortion criminalization in California—from statehood in 1850 through 1969—the process of prosecuting suspected violators of the abortion statute underwent a dramatic change and was marked in particular by the Pacific Coast Abortion Ring.[4] In 1937, Reginald Rankin and his cohort were charged with multiple violations of California's abortion statute. Before *Rankin*, safe, successful abortions remained invisible from the wider public. At the same time, physician-abortionists could rely on ambiguity in the law, or even victim-blaming, to explain failed abortions. But after the *Rankin* case, women seeking abortions had two options: (1) attempt to acquire legal abortions by petitioning hospital therapeutic abortion committees and deferring to their judgment, or (2) take their chances with illegal providers. The *Rankin* case opened the door for stricter enforcement of the abortion statute. As a result, fewer physicians risked performing the procedure unless their patient had what they believed to be a clear, justifiable exception. The men and women who continued to

[3] *People of the State of California vs. Reginald L. Rankin, et al* (1937).

[4] I will use PCAR, Watts-Rankin Outfit, and *Rankin* case interchangeably. All refer to the Pacific Coast Abortion Ring and its resulting trial: *People of the State of California v. Reginald L. Rankin, et al* (1937).

perform illegal abortions had to find new ways to work under the legal or professionalized medicine radar. Providers of illegal abortions responded to individual women's needs.[5] Combined with mounting efforts to liberalize existing abortion laws from physicians and women's rights advocates, providers of illegal abortions eroded at the meaning of the law to such a degree that in *People vs. Belous* (1969), the California Supreme Court ruled the 19th century statute could no longer stand.

Providers of illegal abortion played a critical role in exposing and exploiting the faults in California's abortion statute through the twentieth century. *From Back Alley to the Border* posits that California's nineteenth century abortion statute was stagnant and did not represent twentieth century women's needs. State legislators remained uninterested in decriminalizing abortion, and abortion providers continued to profit from that disinterest. Legislating abortion was integral to controlling women's bodies and behaviors at a time, in the early twentieth century, when women were challenging their given place in society. In the absence of real social control, abortion legislation provided an illusion. When heat from law enforcement compromised abortionists' jobs, they modified and transformed their methods of serving their patients in order to delay or avoid arrest.

As medical technologies progressed—specifically as the use of antibiotic drugs increased—the procedure became less dangerous, and provided fewer opportunities for police to arrest providers of illegal abortion. Decreased mortality contributed to the targeting of a large, coast-wide, and comparatively safe, organized abortion syndicate—the Watts-Rankin outfit which operated from 1935-1936, or Pacific Coast Abortion Ring (PCAR) as it would later be

[5] When possible, I will use the term "providers of illegal abortions." This delineates that the *procedure* itself was illegal. It does not make a claim about the person performing it. This way, it encompasses everything from physicians performing abortions for extra income or for non-therapeutic reasons as well as untrained and unlicensed practitioners who are performing abortions.

called. PCAR not only provided newspapers with titillating fodder, but it also contributed to local and nationwide abortion restriction in the form of increased surveillance, reduced standards of evidence, stricter enforcement of Therapeutic Abortion laws, and federal investigation into abortion activities. Ultimately, increased abortion restriction forced California's providers of illegal abortion to retreat into shadows, but only for them to develop new ways to serve their patrons. Women were still willing to pay for abortions despite the potential ramifications; many abortionists simply developed new, ingenious methods to stay in business. Abortionists' creativity and deliberate exploitation of the nineteenth century statute's loopholes took them across the border into Mexico. Fears about California women—white women—procuring abortions in Mexico were at the center of the *Belous* case in 1967 and its appeal in 1969. Though *Belous* resulted in a victory for women in California, its aftereffects extended beyond state borders when it initiated an onslaught of legal action elsewhere. Women, physicians, and lawyers saw the *Belous* case chip away at the broader legal basis for abortion legislation. Ultimately, the *Belous* case was a success for California women, and in 1969, the California Supreme Court found its abortion statute void for vagueness—four years before *Roe v. Wade*.[6]

In order to highlight the significance of the *Rankin* decision in 1937, and to show how it differed from previous abortion cases, in chapters 1-3 I examine five abortion trials before 1936—the stories of abortionists Galen Hickok and Henry Lee Mottard, and the abortion-related deaths of Delphine Walsh, Vera Nelson, and Margaret Scott. These were sensational cases with ample coverage in local and nation-wide press. They were noteworthy incidents that either provoked hatred and disgust of the illegal abortionist, sympathy and pity for the girls, or empathy for the physicians who performed the fatal procedures. These episodes were used to represent the

[6] Dr. Belous won his appeal in 1969. He was initially convicted in 1967. The initial trial was against the abortion statute as it read in 1967. There was a liberalization of California abortion law by the time of the appeal in 1969, but the liberalization did not cover the parties in the *Belous* case.

dangers and evils of illegal operation. These cases illustrate how law enforcement pursued and investigated abortion deaths, societal concerns about gender, and a genuine interest on the part of the medical community to monitor and police its constituents. The contemporary public may have been able to read into these young women's concerns and motivations for pursuing an illegal procedure, but ultimately they also stood as cautionary examples for other young women who would want to avoid a similar fate.

Additionally, chapter 3 serves another purpose. In addition to providing an account of the abortion that killed Margaret Scott, it provides an account of Dr. Mathew Marmillion, the black Los Angeles physician convicted of performing the abortion. This chapter addresses the black experience in the medical field, as well as black discussions on birth control and contraception. It exposes some of the difficulties that black medical professionals faced in contrast to their white peers. At the same time, it can offer some insight into the types of people who became their patients.

In chapter 4, I examine the roles of female abortion providers. At the most basic level, this chapter seeks to remind the reader that women's involvement in the abortion business was limited to patients or victims. This chapter illustrates how the medical profession and public viewed female abortionists as particularly deviant. It shows that female abortionists had a precarious position in the industry, in many ways, like their black counterparts. Because some were midwives—and many more were assumed to be—the medical field was also interested in monitoring them. Female abortionists were targeted, and they had little social influence to assist them in getting out of their claim. This chapter uses the example of Laura Miner to explain why some women went into the profession; furthermore, Laura Miner will come back into our story later in PCAR, and as a case in the years after.

Chapter 5 focuses specifically on the Watts-Rankin Outfit, or Pacific Coast Abortion Ring. This chapter traces the history of the ring, describes how it functioned, and walks us through its discovery and the case. It highlights the connection between illegal abortions and the criminal underworld but also shows us PCAR's efficiency, high standards of practice, and sense of consumer responsibility. This chapter may leave the reader conflicted—on one hand, deeming Reginald Rankin (the syndicate leader) a rogue for the ways he conducted business, on the other hand, appreciating that he provided many women with safe, sanitary abortions.

The years after the *Rankin* case saw a dramatic shift in how women acquired abortions. Chapter 6 revisits some of the *Rankin* defendants—namely Rankin and Miner—and show their failed attempts to continue abortion practices after PCAR. After the dissolution of the Ring, both served time—Rankin again in Reno, Nevada, and Miner in California's Tehachapi women's prison. Upon her release from Tehachapi, Miner never returned to the business of abortion. Rankin did. With newfound vigor, he found a new method of providing women the procedures they desired. In Southern California, mobility became an abortionist's greatest asset. Blessed by geographic proximity to the Mexican border, Rankin and Dr. Roy L. Buffum employed a particularly unusual tactic to evade arrests, and decided it was best to conduct their business outside of the reaches of American law in nearby Mexico. They were initially convicted for violating California's abortions statute. However, when they successfully appealed in 1953 they undermined law enforcement and the medical community, and opened the floodgates for women to acquire abortions in nearby border cities.[7] "Tijuana abortions" became synonymous with all illegal abortions south of the border (regardless of what city they actually occurred in). More significantly, they gained a reputation for illicitness and fueled a sense of paranoia. By the middle of the 1960s, Californians increasingly sided with efforts to relax existing abortion laws.

[7] *People v. Buffum*, 256 P.2d 317 (Cal. 1953)

Particularly when combined with heterosexual, middle-class couples' concerns over genetic abnormalities and fetal deformities in the wake of the Thalidomide and German measles scares. Our final chapter takes us to 1969, when a reputable obstetrician referred a client to an abortionist—fearing she would turn to the "butchery" in Tijuana—the California Supreme Court ultimately found that California's nineteenth century anti-abortion law was "void for vagueness" and could no longer stand.

This body of work builds upon the literature on the history of birth control and abortion in the United States. Many of the notable works on this topic emerged in response to women's liberation in the 1970s through early 1980s—for example, Linda Gordon's *Woman's Body, Woman's Right: A Social History of Birth Control in America*, James Mohr's *Abortion in America: The Origins and Evolution of National Policy*, and Kristin Luker's *Abortion and the Politics of Motherhood*, were published in 1976, 1978, and 1985, respectively. These academics lived and wrote in the era of the *Roe vs. Wade* decision (1973). Their firsthand experience with events leading up to the decision likely informed their writing and perspective. Perhaps the *Roe* decision inspired a sense of hope for the future. Or, perhaps their optimism was short-lived when the 1976 Hyde Amendment prohibited the allocation of federal funds for abortions.

Though some works on abortion were published in the period between 1985 and 1995—specifically Eva Rubin's *Abortion, Politics, and the Courts*, and Janet Farrell Brodie's *Abortion and Contraception in Nineteenth-Century America*—the most significant published work on the history of abortion since 1985 has been Leslie Reagan's *When Abortion Was a Crime: Women, Medicine, and the Law in the United States, 1867-1973*. Unlike earlier works that focus broadly on contraception, the development of abortion laws, or the shifts in public discourse over

abortion, Reagan's book was the first to provide a systematic study of the entire period of abortion criminalization.

One of Luker's main contributions to the field was her discussion of "the century of silence," in which she claims "controversy on abortion was remarkably low-key for the better part of a century" because the medical field has essentially monopolized the abortion issue.[8] According to Luker:

> This period . . . is all the more intriguing because it stretched across the Great Depression—when American fertility reached a historic low, when the burdens of unintended pregnancies must have been very high, and when by many accounts the practice of illegal abortion flourished. Even the Depression, which gave rise to the most profound social and political change this country has seen, failed to create a movement to liberalize or repeal abortion laws.[9]

While Luker's perspective is not only narrow—only equating agency and discussion with political and social activism—it is also incorrect. Her assumption that the medical field had full control over the abortion issue is hyperbole. While organizations like the American Medical Association may have openly stated their positions on the issue of abortion, the fact remained that it had little to do with criminal abortion—unless the provider was licensed in some way—after the "legitimization" and "organization" of the profession. Additionally, while abortion may not have been a topic discussed in "polite company," it was anything but absent from public discourse. Abortion was an important topic for countless women and their families, as well as law enforcement, and the reading public.

Reagan has challenged Luker's discussion of silence in her own right stating:

> metaphors of "silence" and "speaking" implicitly refer to women's ability to speak in specific forums from which women have been excluded. The speech that has been privileged is political speech in national and local civic institutions controlled by men. Emphasizing the "silence" surrounding abortion inaccurately

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[8] Kristin Luker, *Abortion and the Politics of Motherhood* (Berkeley: University of California Press, 1985), 40.

[9] Luker, 41.

> represents the history of abortion and ignores what women did say in *other* arenas . . . They did not proclaim their abortion in open political forums, but they did speak of their abortions among themselves and within smaller, more intimate spaces[10]

Reagan suggests that women spoke openly about their abortions in small, intimate groups. That "the publicly articulated and published discussion of abortion rarely included the voices or perspectives of women who had abortions . . . Women who had abortions did not intervene to explain themselves, but instead, in other nonpublic arenas, made their perspectives known."[11] However, in the *Rankin* case, many women took the stand to explain why they had an abortion. While Reagan acknowledges arenas in which women did have a voice—small intimate circles—she does not discuss arenas in which women were *made* to have a voice.

While this dissertation generally agrees with Reagan's four periods in the "epoch of illegal abortion," I would argue that the period in which women openly spoke about their abortions began after the *Rankin* case, and not in the fourth period from the mid-1950s through 1973, as Reagan suggests.[12] Because of decreased mortality, antibiotics, specialization, and the potential to locate patients via medical paperwork, prosecutors' abilities to place live women on the stand disrupted the process of limiting public discussions of abortion to stories of fatalities.[13] When prosecutors placed women on the stands in, and after, PCAR, it presented an opportunity for women to speak openly about their abortions. While their initial placement on the stand was

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[10] Leslie Reagan, *When Abortion Was a Crime: Women, Medicine, and Law in the United States, 1867-1973* (Berkeley: University of California Press, 1998), 21.

[11] Ibid., 7.

[12] Ibid., 14-15. 1880-1930, the 1930s, the 1940s through 1973 and an overlapping period from the mid 1950s through 1973 form the four periods of the "epoch of illegal abortion." According to Reagan, the first period was marked by continuity and slow change, abortion was practiced and accepted, there was a diversity of practitioners and locations, but there was a crackdown from the 1890s through the 1920s. The 1930s was marked by the Depression, a movement of legal abortions to hospitals, and the wide availability of the procedure. The 3rd period overlapped with the fourth, but included increased restriction, and was tied to repressions of other forms of social and political deviance. The final period resulted in efforts to decriminalize abortion and feminist and physician-backed movements calling for decriminalization.

[13] Alexander Fleming discovered penicillin, the first antibiotic, in 1928. He first published his findings in 1929. Though some research began in the 1930s, it was not until the 1940s that it was widely used.

not by choice, the women who did take the stand spoke for themselves. Despite prosecutors' efforts to circumscribe their narratives, women had an opportunity to speak out. Neither Reagan nor Luker acknowledge women's positions on the stand. While there were no discernible efforts *by women* to overturn the existing abortion laws, women's deliberate actions to seek criminal abortionists reflected a sense of agency as well as ownership over one's own body. It shows they knew the law did not represent them, as well as an effort to circumnavigate the law. The medical field's control over abortion was not absolute. Women always had a choice—however limited it may have been—about abortion. Furthermore, for all practical matters, the women of the early 20th century were too busy working and acquiring illegal, yet accessible, abortions. Having only recently earned the right to vote, most women probably did not see it in their best interest to mobilize against such a taboo laws so soon.

This brief moment of possibility created several potential problems. First, it challenged the popular perception of abortion victims or patients as naïve, seduced, unmarried young women. Second, these women *did not want* to speak about their abortions. Specialization had dramatically reduced the number of fatalities. No longer disembodied, abstract victims or criminals, abortion patients were able to speak for themselves—even if they did not necessarily want to. It was the desire to continue to remain silent that drove abortion-seeking women across the border. Decreased mortality and increased specialization meant more women were likely to experience public exposure after an illegal abortion, and were more likely to stand trial and divulge the most personal details of their lives and bodies to a room full of strangers. Women *had to*, *were forced to*, speak about their abortions *before* the 1950s. It was only in the context of civil rights movements in the 1960s and 1970s, that they saw their opportunity to utilize their voices as an outlet for change rather than a tool of punishment.

Additionally, I posit that the increased restriction in the third and fourth periods is what ultimately compelled abortion providers in Southern California to look toward Mexico for a place to perform the procedure. Even if we want to hold on the tenets of Luker's argument that suggest that liberalization of abortion laws did not occur until the medical community vouched for them, we can still assert that Tijuana abortions were significant to that shift. In the medical field, Tijuana abortions revived discussions about preservation of life and health when advancements in medicine had all but eradicated threats to maternity.

Since Luker is flippant to the history of abortion from 1890 through 1950—jumping from the professionalization of the medical field to California's efforts at reforming the abortion law and offering no analysis of the intervening years since no legal or social movements resulted—this dissertation builds on Reagan's work to tell California's unique story of abortion. While women had traveled outside of the country to receive abortions before the 1950s, developments in transportation are what made the *Buffum* case so significant to Southern California women at that time. It made traveling outside of the country to receive an abortion a much easier task than it had been in the decades before. Furthermore, the *Buffum* case shifted the center of Mexican abortions. Before 1953 wealthier women would fly to Mexico City to receive abortions from licensed Mexican physicians. After *Buffum*, Mexican abortions shifted towards the border and were accessible to nearly every woman who could afford a bus ticket.

In some respects, one could claim that women who acquired illegal abortions before 1967 in California (or 1973 elsewhere) had abortion on demand. They chose to not let red tape deter them from claiming ownership of their bodies. Lack of political action or organization did not mean that women had resigned themselves to having limited

control over their own reproduction—contrary to what Luker suggested.[14] After all, citizenship, the right to vote, education, and equality before the law mean nothing to women if they don't have the right to own their own bodies. History has shown us that outlawing abortion won't stop women from seeking the procedure. Rather, it is imperative for the law to recognize and protect a woman's right to control her own body.

Background

Before we can begin our twentieth-century story, we must go back a few centuries to understand and appreciate the vacillations in American public thought on the complex issue and history of abortion.[15] In the seventeenth and eighteenth centuries, it was common for women to take savin (or red cedar), black root, or pennyroyal to induce miscarriage. As an issue of public concern, abortion was primarily understood as an attempt to cover up sex outside of marriage, or to remove reproduction from sexual activity. While it provoked discussions about sexual purity and courtship, abortion rarely prompted debate about fetal life unless "quickening" had occurred. Quickening, the sensation of fetal movement, occurs as early as twelve to thirteen weeks in some women and as late as twenty weeks in others. After that point, seventeenth and eighteenth century society considered induced miscarriage or abortion was "a crime, because the fetus itself had manifested some semblance of a separate existence: the ability to move."[16] Once quickening occurred there was a "moral obligation to carry the fetus to term."[17] So long as the abortion or

[14] Luker, 100.
[15] Ibid., 58.
[16] James C. Mohr, *Abortion in America: The Origins and Evolution of National Policy* (Oxford: Oxford University Press, 1979), 3.
[17] Reagan, *When Abortion Was a Crime*, 9.

miscarriage occurred before quickening, Americans overwhelmingly remained uninterested in penalization.[18]

At the same time, abortion was also considered a remedy or practice to help return regularity to women's bodies. Women and midwives saw abortion as a means of restoring the body to its natural balance. When a woman missed her period, she was "obstructed." This practice of removing the obstruction was an at-home procedure that included taking herbs and other forms of home remedies in order to bring about menses.[19] Before the organization of the medical field society accepted these methods of inducing a miscarriage so long as they occurred *before* quickening. Before quickening, there was no way of knowing whether the obstruction was a pregnancy or something more dangerous. However, other scholars of the early period of abortion have stated that it was not always possible for colonial assemblies to "establish pregnancy, let alone determine whether gestation had been *intentionally* terminated."[20] Furthermore, only the woman could attest to whether she had experienced quickening.

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[18] In the abortion-related death of Sarah Grosvenor, Cornelia Hughes Dayton states "Connecticut legal officials concentrated not on the act of abortion per se, but on the fact that an abortion attempt had led to a young woman's death." In her footnote, she explains that abortion before quickening was not considered a crime in English or colonial criminal courts. Janet Farrell Brodie further states that the second half of the 19th century saw the creation of laws to alter "two hundred years of American custom and public policy toward abortion… For two centuries in America, abortion had been treated according to common law tradition in which abortions before 'quickening'… were not punishable, and those procured later, after quickening, might be high misdemeanors if the woman died…" The fact that laws began to criminalize abortion at any stage of the pregnancy at this time (in the mid-19th century) suggests a response to the lack of these laws before. See Cornelia Hughes Dayton, "Taking the Trade: Abortion and Gender Relations in an Eighteenth-Century New England Village," *The William and Mary Quarterly*, vol. 48, no. 1 (January 1991), 20 and Janet Farrell Brodie, *Contraception and Abortion in Nineteenth-Century America* (Ithaca: Cornell University Press, 1994), 253-288.

[19] Reagan, *When Abortion Was a Crime*, 8-9.

[20] Zoila, Acevedo, "Abortion in Early America," *Women & Health*, vol. 4, no. 2 (Summer 1979), 163.

As the eighteenth century gave way to the nineteenth, American society gradually shifted from predominately family-centric and agricultural to modern and industrial as the seat of production moved from the home to the factory. This period also witnessed an era of transition in the abortion business. While there had been earlier arguments for and against abortion, the widespread dissemination of information—advertisements and other print media in particular—afforded greater opportunities for the public to speak on this previously private procedure.[21] Early home catalogs and almanacs instructed women on how to deal with their "common cold," offering means that women in rural areas could easily access—plants, herbs, even lifting heavy objects or taking violent falls.[22] The use of euphemisms suggested that the practice itself needed to remain obscure and coded. Yet, the language also suggests that abortion was commonplace. Nevertheless, by the 1820s and 1830s, some territories and states began to implement antiabortion measures. Many legislators imagined these laws against abortion as a form of consumer protection as increased medical and technological knowledge resulted in new, untested methods of abortion—some with consequences more crude than earlier abortion methods when performed by inexperienced hands. However, depending on their geographic location, some women had no choice but to resort to irregular or untrained professionals.

The development of gynecological-specific instruments in the late 19th century contributed to some of the dangers of early surgical, or instrumental abortions. In the wrong hands, these instruments could be lethal. 0-31, Late 19th century Double Crochet, Collection of Obstetrical Instruments, Cushing/Whitney Medical Library, Medical History Library, Yale University, http://cwml.med.yale.edu/historical-old/instruments/obgyntemplate.html

In 1859, a California Grand Jury accused Julia Moore of performing an illegal abortion on Lucy Nuttall. On August 19, Julia had fashioned a hook-like device out of a piece of metal and

[21] Luker, 58.
[22] Mohr, 7.

"did feloniously, unlawfully and of her malice aforethought make a violent assault" upon the body of Lucy Nuttall.[23] We do not know how far along Lucy Nuttall was in her pregnancy but the language in the indictment suggests that Nuttal had passed quickening. The indictment charged Julia Moore with the murder of the "child" and of Ms. Nuttall, who died on September 2. The abortion, which the Grand Jury claimed Ms. Moore performed "violently, wickedly and inhumanly," was a violation of California's Crime and Punishment Act.

Facilitated by the completion of the transcontinental railroad and other historical developments, nineteenth-century westward migration created an opportunity for unlicensed medical practitioners to thrive beyond major metropolitan areas associated with a professional class of physicians. With distance from major cities like Philadelphia and New York, many self-taught or part-time "physicians" took up medical practice and prescribed various treatments, remedies, and elixirs.[24] In the United States, abortion legislation grew incrementally alongside the nation's steadily evolving technology—medical and industrial. Even with these new policies, high infant and maternal mortality made abortion a safer procedure than childbirth. In the hands of a skilled practitioner, abortion may have been—to some women—a favorable alternative to potential injury or death from carrying a pregnancy to term.[25] The growth of this pseudo-professional class—of naturopaths, osteopaths, chiropractors, and other irregulars—resulted in efforts to organize and legitimate the profession. Indeed, though the early nineteenth century did produce some of the earliest antiabortion laws in America, these laws overwhelmingly punished the person who provided the abortion as a matter of consumer safety—and *only* if the abortion occurred *after* quickening.

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[23] California Grand Jury (Nevada County), "Indictment of Julia Moore," September 19, 1859, The Huntington Library, San Marino, California, mssHM 68279.

[24] Mohr, 32-33.

[25] Peter C. Engelman, *A History of the Birth Control Movement in America* (Santa Barbara: Praeger, 2011), 10.

Until the nineteenth century, most existing methods of birth control remained unchanged: withdrawal, extended periods of nursing, abstinence, ingesting herbs or plants thought to have contraceptive or abortifacient properties, the use of some kind of condom, introducing foreign objects into the cervix to induce abortion and, in the most extreme of cases, infanticide. Withdrawal, nursing, condoms, and abstinence were common preventative methods with varying levels of effectiveness. Abortion was different. It was an invasive means of contraception *after* conception. While ingesting plants or herbs to induce miscarriage may have been easier to hide from prying eyes—the miscarriage could have been blamed on natural causes rather a deliberate act—inducing instrumental abortion typically required another person to assist. Additionally, instrumental abortions that resulted in complications or death could not easily be dismissed. They reflected deliberation and intent.

By the end of the nineteenth century, the days of women ingesting herbs and plants were past as more people lived in cities—away from rural areas with plants—and abortion became medicalized in the sense that it shifted away from home remedies to drugs, medical instruments and the assistance of a presumed specialist. This became particularly true after the invention of the curette in the late 19th century. Industrialization in the nineteenth century resulted in a vast array of medicines, devices, tonics, and medicines for women's health. Instead of plants, women ingested mail-order drugs they hoped would help them, or they submitted themselves to a medical procedure performed by a physician or unlicensed layperson.[26]

[26] Prior to the Pure Food and Drug Act, there were no regulations for labeling or advertising patent medicines. The people who bottled and sold their patent medicines could claim that their products would alleviate female maladies while including a disclaimer that pregnant women should avoid taking these products. By default, these products became mail-order abortifacients. At the same time, physicians and others on the fringes of respectable medicine could claim that they specialized in women's health. Women seeking abortions frequently understood these ads by reading into what they *implied* rather than what they explicitly stated.

At the same time that the practice of abortion was undergoing a shift, Goodyear's rubber vulcanization process—which allowed rubber to remain intact in heat and cold—transformed other contraceptive devices. Once haphazard prophylactics constructed from various linens, intestines, or other raw materials, contraception developed into its own systematic industry. Soon, the vulcanization process opened the door to a variety of other rubber contraceptive devices, including IUDs, diaphragms, and douching syringes.[27] Like the advertisements for abortionists and patent medicines to induce abortion, these early, mass-produced contraceptives were available through mail order or over the counter.[28] Increased printing technologies allowed for information about birth control and abortion to be widely disseminated. Advertisements for contraceptives, doctors who treated women's conditions, as well as those for patent medicines to induce miscarriage all made sex more visible.

Not all approved of this visibility. Anthony Comstock, a member of the Young Men's Christian Association (YMCA) found birth control and abortion material obscene.[29] He believed that they opened a Pandora's box and embarked upon a crusade against anything he thought would result in moral turpitude. His reasons for despising women who "casually terminated pregnancies" may also have been personal, as he and his wife suffered the tragedy of losing their only daughter when she was just an infant.[30] Disgusted with how commercial sex degraded society, Comstock helped create the New York Society for the Suppression of Vice (of which he became head), and lobbied Congress for federal anti-obscenity laws. Comstock gained ultimate power in a war against the transmission of obscene material. In 1873, he passed the Comstock

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[27] Andrea Tone, *Devices and Desires: A History of Contraception in America* (New York: Hill and Wang, 2001), 14.

[28] The American Medical Association formally opposed technologies of contraception until the Depression, so few physicians, if any, would openly dispense these.

[29] Comstock, himself, probably didn't see a difference between "contraception" and "abortion," however for purposes of using precise language, I have separated the two.

[30] Tone, 8.

Act and became a Special Agent for the U.S. Post Office. In this position, he was not only able to target individuals for misuse of the mail, he was also able to engage in moral censorship—targeting buyers and sellers of contraceptives, medical quacks, and immoral books and pamphlets.[31]

Notwithstanding Comstock's best efforts, manufacturers and advertisers of abortifacients found methods of eluding censorship—for example, putting warning labels on products that urged pregnant women *not* to use them because it might induce miscarriage. By reading between the lines, women would know that this particular product could assist them with their condition. At the same time that early pharmaceutical companies were profiting dramatically from the unregulated market, physicians (and non-physicians alike) began to specialize in the procedure. With specialization, abortion remained a safer alternative to childbirth until the mortality rate lowered in the twentieth century—coincidentally when most deliveries moved to the hospital.

Abortion deaths were not always a direct result of the inherent danger of the procedure—instead, they frequently reflected the skill of the provider or the amount of money the victim was able to pay. Most women who acquired abortions in the late nineteenth and early twentieth centuries did so quietly using referrals from friends, sisters, coworkers, or trusted physicians. Many of these women secretly had successful abortions and survived. Nevertheless, these were not the women who became topics of conversation in popular culture. The sensationalism of publicized abortion-related deaths provided fodder for the reformers, moralists, and physicians who believed that legalized abortion would gradually erode America's moral fabric.

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[31] For more on Anthony Comstock, see Anna Louise Bates, *Weeder in the Garden of the Lord: Anthony Comstock's Life and Career* (Lanham: University Press of America, 1995), Nicola Kay Beisel, *Imperiled Innocents: Anthony Comstock and Family Reproduction in Victorian America* (Princeton: Princeton University Press, 1997), and Anthony Comstock, *Traps for the Young* (New York: Funk & Wagnalls Company, 1883).

As ads for abortionists and women's aids flourished, newspapers of the late nineteenth and early twentieth century broadcasted story after story of pretty, young girls who died after the effects of an illegal operation. Undercover reporters for the *New York Times* released a twenty-five part exposé entitled "Infanticide" to speak of the dangers of criminal abortion and its villainous providers. Using two undercover journalists—posing as a couple—the reporters rode the coattails of the Christian reform movements sweeping across cities in the Gilded Age and transported their readers into the abortion underworld by exposing physicians, midwives, and law enforcement officers in the middle of the city allied with the trade. Using abortions as seedy, human-interest stories helped newspapers profit from the "exciting copy and could dominate local newspapers for days."[32] Stories of sex, jilted lovers, cover-ups, trunk murders, and deaths operated as a kind of didactic pornography in which young, lovely white girls perished by the dozen. Women who died because of illegal operations could no longer conceal their sexual activities when the papers capitalized on their sexuality. The late nineteenth century and early twentieth century marked an era of increased concerns about "sexual expression outside of marriage."[33] Efforts to publicize stories about female victims were part of a larger attempt to regulate women's sexuality, and were narrated in conformity with a marital, reproductive framework which not only involved criminalizing abortion, but also repressing homosexuality, policing prostitution, and efforts to prevent the dissemination of "obscene" material. As these reform efforts continued into the 1910s and 1920s, narratives of female delinquency at times supplanted narratives of female victimization—a shift that, perhaps reluctantly, acknowledged women's sexual agency.[34]

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[32] Reagan, *When Abortion Was a Crime*, 125.

[33] Mary E. Odem, *Delinquent Daughters: Protecting and Policing Adolescent Female Sexuality in the United States 1885-1920* (Chapel Hill: The University of North Carolina Press, 1995), 2.

[34] Ibid.

Dr. Horatio Storer, the man who would become the preeminent face of the anti-abortion movement in the nineteenth century, believed that "medical men" were "the physical guardians of women and their offspring."[35] Dr. Storer, a quintessential example of the 19th century AMA member, was from New England, was graduate of Harvard Medical School, and devoutly religious. He even became the vice president of the AMA for some time. A member of the first generation of American physicians to specialize in the burgeoning field of gynecology, Storer devoted his life to that specialty and wrote volumes on the diseases of women. Specifically, he became most well known for his efforts to eradicate the practice of abortion.

The antiabortion campaign imbued pregnancy with a moral discourse absent in previous incarnations.[36] While some doctors and members of the public began to refer to abortion as antenatal infanticide or murder, most efforts to restrict access to abortion were attempts to keep women's reproduction and sexuality within the acceptable parameters of monogamous, racially homogenous, reproductive, marital sexuality; even as some of these later abortion critics rallied behind a banner of protecting women from back-alley butchers.[37] The medical field and law enforcement's "focus on fatalities" did, to an extent, protect women "by locking up some of the worst abortionists. Yet the criminalization of abortion contributed to the dangers of abortion because it restricted access to better trained and more careful practitioners."[38] However, the truth was that physicians' self-interest motivated their marginalization of the procedure during this period.

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[35] Horatio Storer, *Criminal Abortion: Its Nature, Its Evidence, and Its Law* (Boston: Little, Brown, and Company, 1868), 4.

[36] The antiabortion campaign "era," was from approximately 1857 when the American Medical Association officially organized through 1880 when all states finally had an abortion statute. Though California had an abortion statute from statehood, the period after 1880 is recognized as an era of criminalization of abortion nationwide.

[37] Mrs. Emma F. Angell Drake, *What a Young Wife Ought to Know* (Philadelphia: The Vir Publishing Company, 1908), 124.

[38] Reagan, *When Abortion Was a Crime*, 116.

Physicians' and politicians' efforts to criminalize abortion, publicize negative side effects of contraception, and encourage reproduction were attempts to safeguard white political control over an increasingly nonwhite and immigrant populace.[39] White women's use of contraception, coupled with an sharp increase of immigrants from southern and Eastern Europe—and their purportedly high fertility rates in comparison to that of native born whites—led to political panic that linked white females' reproductive decisions and actions to the nation and its success or demise. White women's reproduction became a scarce, contested resource. If native-born white women continued to abort at alarming rates, other immigrant groups—like Irish Catholics whom physicians believed did not abort as frequently because of their religion—would take over the nation. Even though many physicians did not want to offend their middle-class female patients, disentangling birth control from notions of sexual and moral impropriety remained a challenge. As we will see in our first chapter, despite this long history of abortion in the United States, the AMA's effective antiabortion campaign set the stage for the vilification of abortion providers through the first half of the twentieth century.

[39] Nicola Beisel and Tamara Kay, "Abortion, Race, and Gender in Nineteenth-Century America," *American Sociological Review* vol. 69 (August 2004), 498-518; Brodie, *Contraception and Abortion in Nineteenth-Century America*, 266-275; John Higham, *Strangers in the Land: Patterns of American Nativism, 1860-1925* (New Brunswick: Rutgers University Press, 1983); and Peter Schrag, *Not Fit for Our Society: Immigration and Nativism in America* (Berkeley: University of California Press, 2010).

Chapter 1: Villains and Victims: Abortion and the Underworld

> "It is not my place as a health writer to go into the morals, ethics, or legality of abortion…We all know that it is illegal, but let us not shut our eyes to the fact that it is done. We have a situation here somewhat analogous to bootlegging. We regret it—yet only fools say that the nation is not consuming colossal quantities of bootleg. The same is true of abortions."
> —Philip M. Lovell, "Care of the Body—After the Abortion?" *Los Angeles Times*, December 20, 1931, p. D20.

From the late 1800s through the early 20th century, organized medicine was tenacious at vilifying abortionists. Abortion providers had a reputation—among regular physicians and the public—for being greedy, disreputable, and nefarious. In contrast to humble, regular physicians, abortionists could afford luxury and made tawdry displays of their furs and jewels. Rather than heal the public through house calls, they made their living providing black market services to fallen women. They profited form the exorbitant rates that the illegal nature of their services allowed. Since much of the American Medical Association's denigration of abortionists hinged on publicizing the relationship between the procedure and the provider to criminality, it made sense to link stories about poorly performed abortions to other segments of the criminal underworld.

Reputable physician in contrast to an abortionist. The humble reputable physician is dressed modestly and tastefully while the abortionist wears furs. Pieced together from "Infanticide," *The Chicago Times*, December 23, 1888.

In Boston in 1923, a 12-year-old boy discovered a woman's dismembered body in a suitcase discarded in the Merrimac River. When he saw the suitcase, he assumed it was an abandoned case of liquor a rumrunner had tossed, so he fished it out. Imagine his surprise when he opened the case to discover a corpse. The coroner determined that her body was mutilated and discarded because of a fatal illegal abortion. The article—which described in detail

the "cheap black imitation leather suitcase" her abdomen, legs, and hands were discarded in, her missing head, and her clean skin—attempted to incite fear and warn the public of the dangers of illegal operation, unlicensed practitioners, and escaping motherhood. "Cut up by expert," the article continued,

> The torso and arms made a heavy bagful, but when the two clasps were fastened and the lock in the center snapped shut, the bag contained much air and as a result it floated, instead of sinking… The person who threw it away overlooked the air chamber created, which offset the weight of human flesh… There was little doubt… that the cutting was done by a man who knew how to wield a knife or scalpel. While those in charge of the investigation would not declare that in their opinion it was the work of a registered practitioner, it is known that they have not eliminated professional men… The severing of the arms at the shoulders and the neck and vertebrae was cleanly done. The cutting of the body and spinal column near the waist line was also a clean job, with the exception of two jabs in the abdomen. Considering the character of the knife work for the balance of the operation it is believed that the two rough spots were done on purpose to convey the impression that the cutting was done by an amateur.[40]

The media highlighted this case to serve as a warning to women—the fact that the body was dismembered by someone trained meant that even supposed medical professionals could not be trusted. Additionally, this meant the procedure was dangerous. Articles like this highlighted the purported dangers of abortions while descriptions of dismemberment simultaneously connected abortion to other heinous crimes like murder. The young boy who retrieved the suitcase thought he had caught a cache of liquor. Instead, he caught a glimpse of the unsavory underworld. The dismembered body discovered in the river was not the only stance where abortion was linked to other parts of the criminal underworld. This next chapter will focus on two similar figures: Dr. Galen R. Hickok and Henry Lee Mottard. Neither of these men were medical professionals, and both made their livings providing women with illegal abortions. Both men were allegedly responsible for botched procedures that resulted in fatalities. Additionally,

[40] John J. Donovan, "Find Parts of Woman's Body in Suit Case in Merrimac," *Boston Daily Globe*, September 2, 1923, 1, 8.

what made these men unique (but similar to each other) was the attention that law enforcement paid to their properties. Unlike the abortions of the late 18th century, which occurred mostly in doctors offices and patients' homes, these men attempted to utilize the clinic model to centralize their procedures into one, organized locale.

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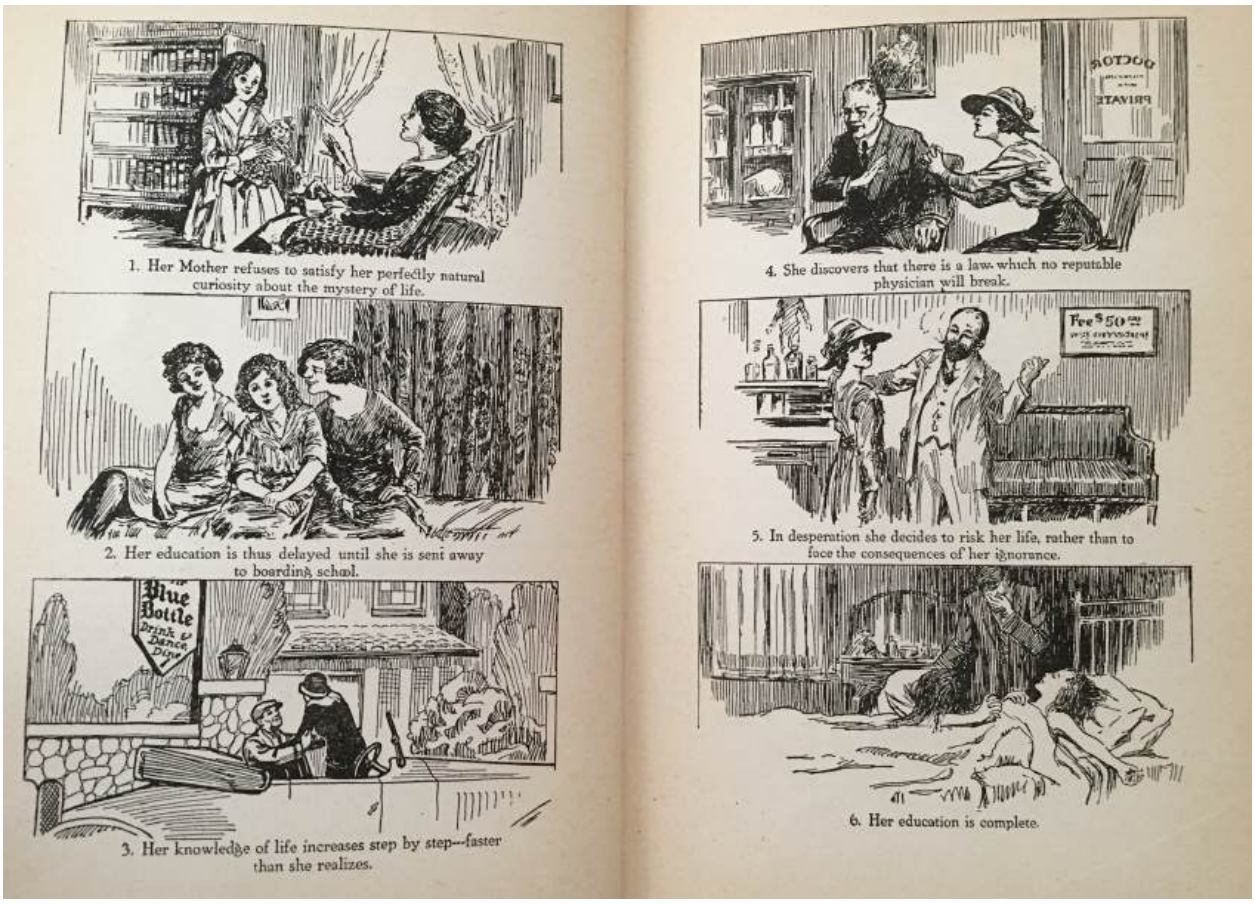
1. Her Mother refuses to satisfy her perfectly natural curiosity about the mystery of life.
2. Her education is thus delayed until she is sent away to boarding school.
Blue Bottle
Drink & Dance Dive
3. Her knowledge of life increases step by step—faster than she realizes.
4. She discovers that there is a law which no reputable physician will break.
Fee $50
5. In desperation she decides to risk her life, rather than to face the consequences of her ignorance.
6. Her education is complete.

This manual for young women provides a pictoral narrative of a young woman's fall from grace. In a story similar to *Road to Ruin* a young woman falls into indecency when she learns about sex from her female friends. She lives fast, rides in cars, and ultimately becomes pregnant. Unable to secure an abortion from a physician, she resorts to an illegal abortionist and dies. From B.G. Jefferis, MD and J.L. Nichols, A.M., *Safe Counsel or Practical Eugenics* (Naperville: J.L. Nichols & Co., 1924), 92-93.

Young, unwed women who died from "illegal operations" were popular personifications of abortion-seekers even though married women received the majority of abortions. The image of young, unwed abortion seekers emerged from late 19th and early 20th century progressives who

claimed that cities were evil places for young women. Unsupervised, immoral city life would lead to moral decline and death. Away from families' immediate oversight, urban living ruptured existing patriarchal family structures. When Josie Leeman died from an illegal operation in 1881, the article author traced her life from her comfortable, Southern upbringing in Savannah, Georgia, to a pauper's lot by way of a number of shameful relationships with men and an unfortunate encounter with a female abortionist.[41] To moral reformers, death from an illegal operation was only the final step after a series of missteps beginning with economic independence, the city, the dance hall, and eventually the vice district. New developments in society and culture were unsafe for young women.

The 1920s looked bright and carefree in comparison to the years of war just prior. The economy blossomed and consumers took advantage by buying cars and using lines of credit. Women, in particular, became the targets of advertising campaigns. *Vogue* magazine's success under Conde Nast, along with a mobilized garment industry, allowed post-war factories to mass-produce clothing. Recently enfranchised, the "new" women of the 1920s cared little of the social causes of the generation prior and cared more about their economic prospects in this burgeoning economy. Young white women found employment and a degree of independence they had never experienced before—particularly those who had just recently moved away from their nuclear families. Lack of surveillance in the city "moved courtship into the public world… [away] from the implied supervision of the private spheres—from the watchful eyes of family and local community—to the anonymity of the public sphere."[42] Even as low wages forced young girls to rely on dating as a means of eating dinner a few days a week, they felt independent as consumers and working women in the city. Part of this independence they felt depended on the ability to

[41] "Shame and a Shroud," *The National Police Gazette*, October 22, 1881, 3.

[42] Beth L. Bailey, *From Front Porch to Back Seat: Courtship in Twentieth-Century America* (Baltimore: The Johns Hopkins University Press, 1989), 13.

control their own reproduction. The New Woman asserted herself as a formidable agent and took back her own body.

After Margaret Sanger opened the first birth control clinic in the United States in 1916, she spent her time bringing the previously taboo subject of middle class sexuality to the fore. She, Frederick A. Blossom, and Elizabeth Stuyvesant, in the very first issue of *Birth Control Review*, stated their aims very clearly. As proponents of contraception, they believed that men and women alike needed to fight for the right of *voluntary* parenthood.[43] In violating the Comstock Act of the 19th century, Sanger made public an understanding that some pregnancies were unwanted, and that women should have the same sexual license as men. However, Sanger also knew the dangers that could occur when poor women had to pay a cheap, back-alley abortionist. She believed it was better for women to have access to contraception first so they would not have to resort to the unregulated underworld. She championed her cause despite becoming embroiled in endless legal battles. Not only would birth control reduce the risk of unwanted pregnancy, Sanger belived it could allow women to enjoy sex and have opportunities to engage in other cultural and intellectual pursuits. Birth control could allow women the same "transience" in sexual relations that men held.[44] In liberating women from the shackles of eternal pregnancy and child rearing, Sanger's efforts dovetailed with the newly independent, and employed, young woman of the 1920s.

In the early twentieth century, there was a dearth of knowledge about contraception, and a discrepancy in the opinions of how that knowledge should be disseminated—with some believing that dispensing birth control information was a matter the government should handle,

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[43] Margaret Sanger, et al, *The Birth Control Review*, vol. 1, no. 1, February 1917, p. 3.

[44] Linda Gordon, *The Moral Property of Women: A History of Birth Control Politics in America* (Urbana: University of Illinois Press, 1974), 133.

while others believed it was a matter that the medical community should undertake.[45] Part of this paucity was a result of the Comstock laws, another part of the problem was the abundance of absurdity.[46] Many believed that birth control would cause sterility, cancer, poisoning, or even "neurosis, sex excitement for women, without maternity."[47] In an article for *Sentinel* readers, Dr. John R. Diaz explained the discussions about birth control that were plaguing the medical profession. Women *wanted* birth control options, but the existing legal statutes restricted physicians' abilities to help them. According to Dr. Diaz, women did not feel compelled to bear children they did not want, so it is important for the laws to "permit scientific, reliable birth control information" in order to avoid the deaths and illnesses of those women who resorted to "spurious, injurious" methods of contraception like abortion.[48]

While most today would not divorce abortion from discussions of birth control, birth control advocates of the early 20th century did. To them, abortion was a last resort, not birth *control*. People like Margaret Sanger and other birth control advocates made an effort to distance themselves from a pro-abortion stance. According to the *Birth Control Review*, there were negative and positive components of birth control and fertility—specifically, there were components of birth control that about population reduction and population increase. The negative aspects included "prevention or postponement of pregnancy, temporarily by contraception, or permanently by sterilization, and its interruption for therapeutic reasons."[49] This stance on birth control excluded abortion except in the cases in which it was considered

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[45] Holmes M. Alexander, "The Case for Legislation," *The Birth Control Review,* vol. 17. no. 2, February 1933, 46.

[46] Most of the original tenets of the Comstock Act remained in effect until an amendment in 1971.

[47] Ray Erwin Baber, "Birth Control: A Balance Sheet," *Forum and Century*, vol. 88, no. 5 (November 1932), 295.

[48] Dr. John R. Diaz, "Birth Control Information Needed, Local Doctor Claims," *Los Angeles Sentinel*, Oct. 18, 1934, 1.

[49] Louise Stevens Bryant, "The Medical Control of Fertility," *Birth Control Review*, vol. 16, no. 9, November 1932, inside font cover.

therapeutically necessary. This stance was very moderate. It was in line with the medical profession and most states' laws. "Birth control," according to Frederick A. Blossom of the *Birth Control Review*, was "the regulation of conception by harmless means, with a view to preventing the birth of undesired children. By no stretch of the wildest imagination can it be made to spell abortion or any form of infanticide, it is not 'race suicide' or any of the dire things conjured up by its overheated and not always scrupulously accurate opponents."[50] Birth control advocates did not have abortion laws at the center of their concerns. In fact, Sanger attempted to distance her cause from abortion stating that birth control was their organization's primary objective—not abortion—and that with access to contraception, abortion could all but disappear.

While the organized medical profession in Southern California may have presented itself as fervently antiabortion, it was difficult to bring about an abortion complaint—or ensure that the investigation was fruitful. According to the California Board of Medical Examiners, there were two pieces of evidence that every successful abortion complaint needed: proof of pregnancy, and proof "that the defendant performed an operation or did something to relieve pregnancy, and that the patient did not at that time suffer from some organic trouble or other physical condition which would endanger her life if she went through normal childbirth."[51] As practical as these categories were, they were vague and difficult to ascertain. It is possible that many women were able to disguise the early stages of their pregnancy. Furthermore, there was always the possibility that someone could claim an "organic trouble" or condition requiring an abortion.

Even with—or perhaps because of—the pitfalls with the law, prosecutors and professional medical societies had been able—with varying degrees of success—to prosecute abortionists in

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[50] Frederick A. Blossom, "Birth Control," *The Birth Control Review*, vol. 1, no. 1, February 1917, 12.

[51] Letter from Albert Carter, BME Special Agent to Dr. O.D. Young, dated June 30, 1926, *Dept. of Consumer Affairs-Board of Medical Examiners*, F3760:819, California State Archives, Office of the Secretary of State, Sacramento, California.

instances when a woman became critically ill or died from an abortion. When a woman died from of an illegal operation, the coroner could often establish pregnancy or a pre-existing condition, if there was one. However, if the woman was slowly dying, a large portion of the investigation's success hinged upon the collection of a dying declaration. Dying declarations were a unique exception to the hearsay rule in American jurisprudence. The practice held that statements made by a dying individual about his or her cause of impending death were admissible in court "so long as those making the statements know they are dying and have no hope of recovery."[52] Initially, the theory held that individuals would not lie before death because it would inevitably invoke God's wrath. Therefore, the statements of dying persons' were admissible because it would be in their best interest to be honest and forthright before meeting their maker. Many view dying declaration as artifacts of the 18th and 19th centuries, though law enforcement continued to use them into the 20th century. They were relics of an era when physicians could do little for their patients except watch them die a slow, and often painful, death. Fatal abortion cases frequently fit the bill. Twentieth century examples include Natalie Romero who died from general peritonitis nearly three weeks after a self-induced abortion. Hazel Scott died from septicemia two weeks after Regina Holscher performed an abortion on her; and, perhaps Allie Mae Sullivan was lucky that it only took her two days to die from the septicemia-induced endometritis following her abortion.[53] It was the *infections* that resulted from unsanitary, poorly performed, or self-induced abortions that were usually fatal, and they usually did not

[52] Aviva Orenstein, "Her Last Words: Dying Declarations and Modern Confrontation Jurisprudence," *University of Illinois Law Review*, Paper 6 (January 2010), 1412.

[53] Los Angeles County Coroner's Register Books, vol. 312: 142, 198, and 233. County of Los Angeles Medical Examiner-Coroner.

result in immediate death.[54] Death from infection was slow since most women avoided going to a hospital or physician until it was too late.

In theory, dying declarations only "worked" when the declarant truly believed that his or her death was imminent. The "*impression* of almost immediate dissolution, and not the rapid succession of death" rendered the testimony admissible.[55] However, if the person making the declaration "had any expectation or hope of recovery" (even if he or she died soon after) the declaration was inadmissible.[56] If the declarant did not believe his or her death was looming, then, arguably, he or she could lie in his or her statement without consequence or fear of God. Dying declarations relied heavily on religious assumptions, but even in their most secular defense, the threat of impending death was believed to be sufficient to compel truth. Others claimed that dying declarations were "dangerous" because the declarant would not have to fear a perjury charge, or that dying declarations were a last opportunity for the dying to exact revenge upon someone else.[57] Though these declarations had their faults, law enforcement officials believed they were useful and significant, and frequently, these declarations were their only chance to gather information about providers of illegal abortions.

Since abortion was such a difficult crime to prosecute when it was safe and invisible, police relied heavily on these declarations for the abortion cases they actually received. The medical profession was aware that it had limited options when pursuing alleged providers of illegal abortions. It even provided guidelines for obtaining dying declarations. According to the *California State Journal of Medicine*, proper evidence required three to four specific

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[54] Infections were often a result of incomplete abortions—where fetal tissue remained in the uterus—or the introduction of bacteria to the uterus through unsterilized medical instruments or unsanitary environments.

[55] F. W. Draper, "Criminal Abortion with a 'Dying Declaration,'" *Boston Medical and Surgical Journal*, vol. 112, no. 19, November 9, 1899, 461. Emphasis in original.

[56] Ibid.

[57] Orenstein, 1418.

components. First, the woman needed to testify that the abortion was attempted or committed. Second, someone needed to establish proof of pregnancy at the time of the alleged operation. Lastly, a *third party* needed to be able to corroborate the story that the abortion had actually happened.[58] If the case involved a dying declaration, the "statement must be taken by a representative of the district attorney's office; the statement must open with the expression on the part of the testatrix that she is about to die or that she knows she is going to die…"[59] One could imagine how difficult it would be to collect evidence as law enforcement agents and physicians simultaneously negotiated space and time in the hospital room for their own duties.

The police's efforts to secure dying declarations from abortion victims put physicians in limbo. If a woman had an abortion that went wrong and sought help from *another* physician, it would be that second physician's legal responsibility to call the authorities once he or she realized the woman had received an illegal operation. Once the physician contacted the authorities, he or she would have to wait until the police had conducted their interrogations *before* he or she could help the patient. Sometimes, the delays turned what could have been an investigation into a dying declaration—meaning that sometimes this delay was the difference between life and death for the patient. Some physicians knew this and attempted to treat the women before the authorities arrived. Even though the physician was attempting to do his or her

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[58] Cal. Penal Code §1108: Upon a trial for procuring or attempting to procure an abortion, or aiding or assisting therein, or for inveigling, enticing, or taking away an unmarried female of previous chaste character, under the age of eighteen years, for the purpose of prostitution, or aiding or assisting therein, the defendant cannot be convicted upon the testimony of the woman upon or with whom the offense was committed, *unless she is corroborated by other evidence.* Emphasis mine. Additionally, Cal. Penal Code §1111 essentially stated that a woman who attempted to procure an abortion was not *technically* an accomplice in the operation. On one hand, Penal Code §1111 stripped women of legal responsibility and agency—perhaps to mitigate the fears that women were actively, deliberately seeking out abortions. It also made it possible for the police to compel these women to testify against their abortionist because under existing laws coconspirators could not testify against each other. On the other hand, Penal Code §1108 reflected a sense of distrust between the law and the women who were caught seeking abortions. Together, these seemingly contradictory laws contributed to the sense of vagueness of abortion law and reflect the difficulty in prosecuting a known abortionist—especially if there was no one else to witness or testify to the operation.

[59] "Criminal Abortion," *California State Journal of Medicine*, vol. XX, no. 1 (1922), 36.

job, this sometimes made the police view this doctor as the primary suspect who fabricated a story about another abortionist in order to cover up his or her own participation. Other physicians even refused to treat women who came to them after a botched procedure out of fear the police would believe that they had been involved in the illegal operation. These physicians likely believed they were protecting themselves from malpractice suits, bad reputations, or the hassle of police interference—for in a state of panic or illness, the woman could name the physician who last treated her and not the person who performed the illegal procedure.

When the police began their investigations, they demanded to know who performed the illegal operation, the name of the man who caused the pregnancy, when and where the illegal abortion took place, and how much money the woman paid among other questions about her sex life. This line of questioning may have felt punitive to the victim and the female family members—mothers, sisters, aunts—who police questioned believing they would have knowledge of the victims' intimate lives. The police believed that questioning women close to the victim would establish proof of pregnancy or perhaps the name of the man responsible for the pregnancy. According to Leslie Reagan, though "the state did not prosecute women for having abortions…it did punish women through persistent questioning by doctors and police and through public exposure of their abortions."[60] Rather than take these women to trial, law enforcement officers forced these women to undergo invasive interrogations while they were most vulnerable.

Concerns about women, social control, morality, and urban vice meant that journalists and readers alike clamored over stories that spelled out the possible horrors resulting from female

[60] Reagan, *When Abortion Was a Crime*, 131.

independence, premarital sex, and removing reproduction from sexuality.[61] At the beginning of the antiabortion campaign, reformers viewed single, white, sexually active women as victims of "white slavery," though later there would be a shift that compelled the public to view these women as sexual delinquents.[62] The image of a young woman on her deathbed was particularly useful. Deluded by a former lover who had perhaps promised her marriage, the image of a young, single woman on her deathbed was enough to revive the iconography of victimization at most, or feminine naïveté at least.

Perhaps the image of a married woman procuring an abortion was too damning. Married women who attempted to abort their children were opportunistic and self-absorbed, while young, unmarried girls represented lost travelers in a world they were unfamiliar with and ill prepared for. Journalists frequently resorted to a narrative of villains and victims when they wrote about failed abortions. Married women who sought abortions were too complicated to generalize about in newspapers, while young unmarried women were convenient tropes.

Heather MacGibbon argued that abortion films in the 1920s depicted one of two tropes for women seeking abortions. Using the film *Where are my Children* (1916), MacGibbon presents the two characters: prima donnas and martyrs or victims.[63] Prima Donnas were wealthy women who shirked personal responsibility in favor of personal freedom. They did not desire to have children for selfish reasons. They were heartless and carefree, negative representations of the "new woman." In *Where are my Children*, the prima donna has an abortion because she wanted to attend her friend's party the following month. In contrast to the prima donnas, martyrs

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[61] Unfortunately, because of the nature of these sources, I am reiterating this unfortunate, aforementioned cycle of describing abortion as dangerous or deadly. Because of the social stigma associated with premarital sex, sex outside of procreation, and of abortion, most women who successfully had abortions did not leave evidence of it in the public record. Because I am focusing on records abortions whose discoveries saw the light of day, I must avail myself of the records that make abortion visible.

[62] Odem.

[63] Heather MacGibbon, *The Abortion Narrative in American Film: 1900-2000*, PhD Dissertation, New York University Department of Cinema Studies, 2007, 10.

were "youthful maidens" who had fallen "prey to the charms of an immoral man."[64] Martyrs were naïve, innocent, and unlike "new women," they believed in Victorian ideologies of virtue. The martyr in *Where are my Children?* succumbed to the sexual initiatives of an immoral man. While initially represented in bright, airy representations, after her sexual encounter and abortion she is haggard and distraught. Her youthful innocence gone. Her "unscrupulous seducer" escorts her to the doctor. She later dies at home, alone. In her death, flowers and a sheer canopy drape her lifeless body—"her innocence is secure in martyrdom."[65] While the prima donna is self-centered, the young martyr was naïve. Her beliefs in love and romance betrayed her as she died alone.

Depictions of a martyrs/victims relied heavily on the construction and development of the abortionist villain counterpart. Though these characters emerged in the late 19th century with yellow journalism exposés, they gained new credence alongside the proliferation of organized crime. According to Leslie Reagan, "the underworld was a staple of popular news reporting."[66] This was the context from which the case of Dr. Galen R. Hickok emerged. Dr. Galen Hickok was a complicated figure for two reasons: namely, he was not actually a doctor or the real Galen R. Hickok. The real Galen Hickok was born in Missouri in 1873. He went to Ottawa University in Kansas, where he finished his degree in 1895. Not long thereafter, he received his medical degree from the St. Louis College of Physicians and Surgeons. He began practicing medicine in 1900 and moved to the prairie town of New Ulysses, Kansas where he was the only practicing physician for several years. He and his family were pioneers in the small town. He registered to practice medicine and surgery in Arkansas, Colorado, Illinois, Iowa, Kansas, Kentucky, Missouri, Nebraska, New Mexico, Oklahoma and Tennessee. While he never lived west of

[64] Ibid., 36.
[65] Ibid., 38.
[66] Reagan, *When Abortion Was a Crime,* 167.

Kansas, he occasionally visited patients as far away as New Mexico and Colorado by special request.[67]

After practicing medicine for some time—and presumably after another physician moved into the area—Galen Hickok, M.D. also did some work in real estate. He opened a real estate office and eventually became president of the Southern Mortgage Company and a prominent figure in local government. When he discovered that someone was fraudulently using his name and credentials in California for illegal activity, he attempted to clear his name. Despite Dr. Hickok's interventions, newspapers and even the California Board of Medical Examiners (BME) continued to use *his* name when referring to the "spurious" man who usurped him.[68]

According to Dr. Hickok, in approximately 1902, his former assistant stole his legitimately earned diploma from the room he temporarily occupied in the Reynolds Hotel in the neighboring town of Ulysses, Kansas. He claimed that the man who stole it went by the name of "Thompson," though his actual name was "Zangwell." Zangwell told the residents of Ulysses his father was German and his mother was English. Hickok described the man as "a little, dark Hebrew," though others stated he was probably Polish or Russian. Zangwell disappeared with Dr. Hickok's diploma and resurfaced in 1904 when he used the stolen credentials to successfully apply for a license to practice medicine in the state of Nevada.

After obtaining the Nevada license, Zangwell practiced in Dweth, Ely, Gardnerville and Midas. Around 1909, Zangwell and his family (his wife Julia, Madeline, Julia's daughter from an earlier marriage, and their son Max) moved to Los Angeles where Julia's mother lived. While in Southern California, Zangwell acquired a license in naturopathy. When called before the

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[67] "Historical Sketch of Galen R. Hickok," *California State Journal of Medicine*, Vol, XVIII, No. 11, Nov. 1920, 397 and Grant County Historical Society and Museum, *The First 100 Years: A Pictoral History of Grant County*, Ulysses, KS, available at http://www.grantcoks.org/DocumentCenter/.

[68] For accuracy and the real Dr. Galen R. Hickok's sake and legacy, I will use the name Zangwell. It should be noted that the documentary sources use the name "Dr. Galen R. Hickok" or variations thereof.

Naturopathic Association of California, Zangwell presented Dr. Galen R. Hickok's credentials and was able to masquerade as Hickok. In Los Angeles, Zangwell established networks with the local abortion practitioners. Since Zangwell was already operating on the wrong side of the law—usurping someone else's identity and credentials—it would make sense for him to resort to the practice of illegal abortions since they were lucrative and relatively simple procedures. Before working with the real Dr. Hickok, it is likely that Zangwell had some form of medical training to help bolster his confidence in this grand endeavor.

Even though he had some training, Zangwell was frequently under in Southern California. In order to thwart off investigations from the BME, Zangwell repeatedly changed his business address and business partners. Since complaints and investigations required current addresses, Zangwell's little trick allowed him stay a step ahead of the Board. When he suspected an abortion went poorly, or even after staying at one location for an extended period, Zangwell's business move made him invisible to the Board and nullified an opportunity for investigation since they needed a correct address to proceed. After 1911, Dr. Hickok's name began to appear more often in newspapers in connection with illegal operations. According to a BME investigation, a Los Angeles woman who lived on Temple Street claimed that Dr. Hickok performed a procedure on her at the Bryson building, and told her that he had a confinement home for her if she needed additional treatment. Later that year, an attorney for the Board of Medical Examiners referred to Dr. Hickok as one of the worst abortionists in Los Angeles.

It is unclear when Zangwell and his family moved to northern California. The *California State Journal of Medicine* claimed that Zangwell lived in Los Angeles until 1914. In 1911, he purchased some land in Northern California, and from 1912 until 1920, Zangwell evaded periodic investigations and arrests. In 1912, Zangwell was accused of performing a botched

procedure on a 19-year-old in San Francisco.[69] In her dying declaration, the woman claimed that Dr. Hickok had performed the procedure on her at his office on McAllister Street. He was arrested, booked, and charged with "performing a criminal operation" though he was later released on bail. He did not serve any time, but this was hardly the end of his legal trouble. In 1913, he was charged and arrested for performing an illegal operation on Elsie Pickrell. Even though the prosecutor convinced the judge to increase the amount of bail from $1,000 to $10,000 because of the "incriminating testimony," it does not appear that Zangwell served any time for this either. Despite these two earlier allegations, Zangwell's illegal abortion business prospered to the extent that by 1916, he had a professional office in San Francisco, and a partnership with a surgeon, Dr. Martha Allen Reinhart.[70] He even had enough money to purchase the McCloskey castle in Salada Beach, California (now Pacifica, California). According to Pacifica historian Jerry Crow, Zangwell was arrested twice more in 1916. In 1916, Mrs. Alva McKean accused Zangwell of performing an illegal operation. McKean, a 26-year-old bookkeeper at First National Bank claimed Dr. Hickok performed the procedure that left her critically ill. At St. Mary's Hospital she made her dying declaration wherein she claimed she paid Dr. Hickok $150 for the procedure he performed on August 2. She died on August 30.

Mug shot. From: Galen R. Hickok, Dept. of Consumer Affairs-Board of Medical Examiners Records, Abortion Investigation Files, California State Archives, Office of the Secretary of State, Sacramento, California.

[69] "Historical Sketch of Galen R. Hickok," 397-398; *Pacific Medical Journal*, vol. 54, no. 6, June 1, 1911, 335; "Says Doctor Performed a Criminal Operation" *San Francisco Chronicle*, Sep. 22, 1912, 64.

[70] Some sources list her name as Dr. Allen Reinhart and other as Reinhart Allen (or variations thereof).

Despite further arrests and indictments in 1917 and 1918, Zangwell, the man operating under the name of Dr. Galen Hickok managed to evade jail time until 1920 when his "castle" in Salada Beach became the center of the charge.[71]

Zangwell's decision to run a multi-bed clinic from the relative obscurity of the castle was a departure from the usual methods of running an abortion business—a doctor's office or from a residence. Since the castle was away from the city center, Zangwell remained mostly undisturbed. Women came and left his castle at night under the cover of darkness to not raise concern. The castle was large enough for him to have half a dozen patients there at a time—either undergoing procedures from him or Dr. Allen Reinhart or recovering. It centralized his work in an example of an early abortion clinic—shortly after Sanger's establishment of the clinic model. Following up on the allegations that Dr. Hickok had contributed to the delinquency of a 14-year-old girl, police—armed with search warrants—found "three young girls recovering from operations" and dug up human remains in the garden.[72] The remains, determined to be those of a newborn child and possibly a woman, coupled with the presence of the three recovering "young girls" led to the subsequent arrests of Zangwell, his nurse, Miss Cleo Tevis, and Dr. Allen Reinhart on charges of having performed illegal operations on women. According to the *San Francisco Chronicle*, investigators found articles of women's clothing scattered around the property, which led them to believe there were possibly more human remains on the premise.

Zangwell was arraigned on the charge of performing an illegal operation on Mrs. Bertha Casteel, one of the women found recovering in his castle. When he went to trial, it took the jury just seven minutes to find him guilty. Zangwell was sentenced to two to five years in San

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[71] Special thanks to Mr. Jerry Crow, a local Pacifica, CA historian (formerly Salada Beach, CA), who helped clarify some of the details behind the Hickok identity theft.

[72] "Physicians Convicted" *Journal of the American Medical Association*, vol. 76, no. 15, April 2, 1921 and "Mystery Castle Raided" *Daily Oregonian* September 4, 1920, University of Oregon, Historic Oregon Newspapers.

Quentin prison, lost his appeal, and was denied his request for a retrial.[73] Shortly after the initial trial, Zangwell was served a summons to appear before the State Board of Medical Examiners to show cause why his license should not be revoked—even though by this time the State Board should have been aware of the allegations of fraud and identity theft.[74] The meeting was rescheduled at least once because Dr. Pinkham, the secretary-treasurer of the California State Board of Medical Examiners, hoped to have the actual Dr. Hickok present. Zangwell did not attend the hearing of the State Board. After hearing testimony from patients who he treated as early as 1909, the Board voted to revoke Zangwell's license to practice naturopathy in the State of California. A license he had obtained fraudulently.

The possibility of discarded human remains on the property made the Hickok story national news. Not long after police in San Francisco conducted their search at Zangwell's castle, Suffolk County Sheriffs' officers in New York began to search Henry Lee Mottard's farm on Long Island. Mottard, who journalists described as "slight" and "fidgety," ran an office in Manhattan under the assumed name "Dr. Henry L. Green."[75] Mottard was under investigation for the death of Annie Allison, a 44-year-old woman from Brooklyn. According to Mottard, Allison fell down an elevator shaft in the building and died. However, the death certificate listed the cause of death as "chronic cardiac nephritis."[76] Upon further investigation, Allison's body did not reveal tell-tale signs of a tragic fall. She had no broken bones, bruises, or cuts that one would expect from such a tragedy. Instead, she did show signs of having undergone an illegal abortion. Annie Allison had died in 1923, but another suspicious death in his office prompted them to

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[73] *Sausalito News*, vol. 35, no. 50, December 11, 1920 and "Convicted Physician Loses on Appeal," *San Francisco Chronicle*, December 31, 1921.

[74] "Dr. Hickok Slated to Lose License" *Berkeley Daily Gazette*, May 11, 1921 and "Proprietor of 'Castle' Once Here" *Los Angeles Times*, Sept. 8, 1920, III4.

[75] "Mottard's Patient Maimed After Death, Grand Jury is Told," *The New York Herald, New York Tribune*, April 24, 1925, 6.

[76] "'Dr. Green' Held on Homicide Count," *New York Times*, April 10, 1925, 3.

exhume her body and review the case. Upon her exhumation, Dr. Charles Norris, Chief Medical Examiner, stated that it was his opinion that "a criminal operation had been performed. The cause of death being a hemorrhage."[77] Furthermore, it appeared that Ms. Allison's body had been mutilated after the fact.[78]At the same time as police were investigating the two deaths, Mottard was under investigation in a case involving a missing infant.[79] According to one of Mottard's former nurses, he had instructed her to care for two sick babies—one of which was so sickly the nurse returned it to the doctor, never to be seen again, the other was suspected to be the kidnapped infant Lillian McKenzie.

Two years earlier, Mrs. Peter McKenzie was browsing the stores in Sixth Avenue when she decided to leave baby Lillian in her carriage on the sidewalk as she went inside the store to browse.[80] After shopping for ten minutes or so, Mrs. McKenzie returned outside and discovered that her child was missing. The police led a frantic search for the child. As potential leads slowly dried up, the case went cold. According to the nurse, Mottard said the baby she was to care for was the adopted child of Dr. and Mrs. Grofe. When Mottard put the children in her care, he explained to the nurse that the Grofe's were on holiday and left their child in the care of an inexperienced babysitter. When the Grofe's returned, they were disturbed to find the child was sick. It isn't clear why the nurse suddenly brought up the two babies now when the investigation into Lillian McKenzie's disappearance had been ongoing, but police nevertheless suspected that Mottard had kidnapped the child. Police were also interested in learning the whereabouts of the

[77] "Autopsy of Mrs. Allison Indicates an Operation," *The New York Herald, New York Tribune*, April 17, 1925, 11.

[78] "Mottard's Patient Maimed After Death, Grand Jury is Told."

[79] "'Dr. Green' Held on Homicide Count."

[80] Apparently this was acceptable parenting in the 1920s.

other child who the nurse never saw again. Upon investigation, he had little recollection of the babies, but instead admitted to having performed three illegal abortions at his farm.[81]

After discovering that Mottard had performed illegal operations at his farm, Suffolk County Sheriff officer Amasa Biggs acquired a search warrant on the theory that there might be bodies buried on the property. As the investigation into Mottard escalated, the police discovered that the Grofe's adopted child had been delivered by Mary Sullivan, a teenager, in Mottard's office and could not have been Lillian McKenzie. However, investigators still held Mottard on the belief that they would find an infant discarded on his property.[82] When police searched the farm, they found $12,000 worth of renovations Mottard had spent on his farm operating room, but no private graveyard. Mottard couldn't come up with the $25,000 bail and remained in custody until early May when Judge McIntyre "accepted $15,000…for the release of Henry Lee Mottard."[83]

It is unclear what happened to Zangwell after he served his time in San Quentin—particularly since we can only speculate about his name—and Mottard after he was released on bail. "Dr. Galen Hickok" was paroled on October 4, 1924. In the 1926 San Francisco City Directory, he claimed he was a tailor. In 1928, he was arrested again and served time for practicing medicine without a license. "Dr. Hickok" and his family were listed in the 1930s census living in San Francisco and disappear thereafter though the family maintained ownership of the castle. Max Hickok, Zangwell and Julia's son, became a licensed chiropractor, and in 1938, he was charged with the murder of 42-year-old Mrs. Elizabeth Sowers. Mrs. Sowers, the mother of three adult children named Dr. Max Hickok on her death bed as the man who

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[81] "'Dr. Green' Held on Homicide Count."

[82] Ibid., and "Search for Bodies of Missing Babies on Doctor's Farm," *The Hartford Courant*, April 10, 1925, 1.

[83] "Mottard is Out on Bail," *The New York Times*, May 5, 1925, 11.

performed the criminal operation. He was convicted of a second-degree murder charge, and in the 1940 census was listed as a resident of San Quentin—continuing his father's business practices and his father's legacy in prison.

The cases of the spurious Drs. Galen Hickok and Henry Lee Green illustrated the difficulty that law enforcement and BME agents faced in successfully convicting someone despite what appeared to be a significant amount of evidence. However, these cases also show that a bad reputation didn't necessarily put an abortion provider out of business. In the illegal market, women got the abortionists they could access or afford. They did not have legal protection or access to proper, sanitary healthcare. According to Kristin Luker, black markets "are wealth-sensitive, poor people face the risks more often."[84] As a result, deaths from illegal abortions were unevenly distributed—disproportionately represented in poor women, and in providers who lacked proper credentials. Women's desperation kept these practitioners in business.

These cases also suggested that to the public and law enforcement, abortion was not a huge leap away from other crimes and criminal behavior. Illegal abortion providers lied to protect themselves—or at least that's how they were portrayed. Falsified death certificates and stories about falling down elevator shafts were coverups for the villainous abortionist. As previously mentioned in the introduction, newspapers frequently relied upon an allegory of victims versus villains when writing about abortions. In Zangwell and Mottard's cases, these categories were clear. The women were victims, and Zangwell and Mottard were evil, conniving villains. Allegations of buried bodies, fraud, and identity theft all contributed to the conception that abortion was part of the criminal underworld. These articles reiterated that abortionists were criminals, not unlike bootleggers, mobsters, and murderers.

[84] Luker, 75.

The film *Confessions of a Vice Baron* (1943) compiled earlier films with Willy Castello—including *Race Suicide*—into a new film where a criminal on death row reflected on his life of crime the night before his execution. In his life of crime, the main character James "Lucky" Lombardi, used numerous aliases when pretending to be an aristocrat, running an abortion racket, pimping prostitutes, selling sex-slaves in the white slavery trade, and eventually committing murder. To those who made and watched the film, abortion could not be separate from the rest of the dirty, criminal underworld. In her satirical, yet educational book for women, Patricia Maginnis—writing on "backyard abortionists"—wrote:

> The backyard abortionist… does a fairly good job for a very high price… [After all], this is a game of profit. Some women do die from back backyard abortionists' operations [while few die from those performed by medical doctors]. How do we tell them apart? […] Is the "doctor" wearing a surgical mask, all nice and clean? Is he freshly gowned, or is he still bloody from his last patient? Is his hair covered? Are assistants (if any) equally sterile in appearance? Has your "doctor" scrubbed up, or merely dipped his hands in a basin in the corner of the room? […] These are minimum requirements for any decent minor operation. If he rubs his nose and then puts the same hand into your vaginal tract, beware lady, you have a quack on your hands.[85]

Sensory descriptions of bloody, dirty abortionists suggested that both the patient and abortionist were involved in something vile, and illegal. Likewise, making abortion akin to other mob-related crimes fed into reformers' efforts to regulate the practice. The criminalization of abortion was a legacy of the Progressive Era. Like Prohibition, penalizing those who broke the laws against abortion led to a cat and mouse game. Inconsistencies and loopholes within California's antiabortion statute paralleled those within the Volstead Act. Those who wanted to exploit the loopholes in the Prohibition laws merely acquired their booze legally with pharmacist prescriptions or became members of catholic churches or synagogues. American farmers put labels on their at-home juice making kits with warnings *against* leaving the juice out too long in

[85] Lana Clarke Phelan and Patricia Therese Maginnis, *The Abortion Handbook for Responsible Women* (North Hollywood: Contact Books, 1969), 73-74.

order to avoid fermentation—much like druggists in the Comstock era put warnings on their drugs to "urge" pregnant women to keep away. Similarly, unregulated, illegal alcohol could be deadly for those producing or ingesting it. Thousands of Americans died from ingesting tainted alcohol, while others were injured or killed from distillery fires or noxious fumes. Deregulation in alcohol and abortions meant there was no consumer protection. Because of the disconnect between the law, the behavior it attempted to thwart, and people's actual wishes and desires, people deliberately sought to continue the illegal activity so long as the laws against them persisted—turning countless otherwise law-abiding citizens into criminals.

This chapter has linked two things: the underworld and the abortionist. It has traced abortion's illegality to the movement towards unlicensed—or even unskilled providers. It has also illustrated how the public and the press maligned abortion providers by focusing on the criminal element, linking abortion to other crimes, and using sensational reporting to sell newspapers. In these cases, the abortionist served as the center of the story. In the next two chapters, we will move from the standalone "clinic" to the doctor's office, and we will also move our narrative from villainous abortionists to regular physicians and naïve, seduced young women. As the characters in our abortion narrative change, the legal measures abortionists used to evade arrest change as well. No longer unlicensed back-alley butchers, these physicians used their statuses to loophole their ways out of harsh sentences. The next chapters shift to Souther California and stress the vagueness of California's abortion law. Rather than stand as an insurmountable legal measure, California's abortion law was a minor hurdle for licensed physicians performing illegal abortions.

Chapter 2:

Regular Physicians, Irregular Circumstances: Legal Loopholes, Delphine Walsh, and Vera Nelson

> "The doctor's position in these [criminal abortion] cases is an unpleasant one, but a medical man as such is concerned solely with the proper treatment of the patient and the face that she has been a party to a criminal transaction can have no place in regulating his conduct. His duty is to endeavor to save life regardless of the moral character of the patient."
> —Dr. John Campbell, "The Position of the Medical Practitioner Called in to Attend a Case of Procured Abortion," *The British Medical Journal*, December 10, 1921.

In the period before the Great Depression, Los Angeles's population grew at an almost incomprehensible rate. While some would argue that Los Angeles's history was one of many population booms, Carey McWilliams said it best when he claimed the entire history of Los Angeles's population was a boom—"punctuated" only by "major explosions."[86] From the 19th century on, Los Angeles was a place where people *went to*, not a place where people left. Most of the growth in the late 19th and early 20th centuries was the result of ambitious boosters selling Southern California, the future, and a land of endless sunshine. For example, in 1890, a small social club organized the Pasadena Tournament of Roses in January in order to boast California's mild winter weather. Snowed-in Easterners read accounts of the event in their newspapers where journalists were sure to describe the blooming flowers and beautiful weather blessing the Golden State mid-winter. Many of these boosters "got rich off the unfulfilled hopes of deluded dreamers looking for a paradise that didn't exist."[87] Southern California became a tourist spot where the rest of the world came to winter or heal.

In the late 19th century, after spending some time in Southern California, Dr. William A. Edwards concluded that the Southern California climate possessed the ability to cure a variety of

[86] Carey McWilliams, *Southern California: An Island on the Land* (Layton: Gibbs Smith, 2010), 114.
[87] David L. Ulin, *Literary Los Angeles: A Literary Anthology* (New York: Library of America, 2002), 51.

ailments—from chronic pneumonia, tuberculosis, malaria, and jaundice, to female disturbances and constipation.[88] Dr. Edwards was not the only one to think so highly of the environment. He followed a long line of miners, travelers, and medical experts who fed into the legend of California's healing climate. Boosters inflated these claims of health and eternal sunshine and advertised them to wealthy invalids and consumptives. At the same time, quacks, pharmacists, and "healers" sold their various tonics, cures, and treatments—marking the beginning of a pseudo "doctor"-patient market and creating an environment where people were constantly preoccupied with matters of the body, its functions, and dysfunctions.

The influx of sick travelers to the State sparked the dynamic growth of a system of sanitariums, medical quacks, and eccentrics who sought to capitalize on the growing population. Fruits and vegetables from California's emerging agricultural industry were manifestations of California's sunshine and wellness, and helped cement the idea of California as a health-tourism destination.[89] This focus on health in early California actually contributed to the establishment of some of the oldest medical societies in the United States west of the Mississippi. Like the medical societies in the rest of the country, the medical societies in California—specifically San Francisco and Los Angeles—emerged to dispel quackery and establish uniformity in a climate where charlatans preyed on the sick and naïve of financial means. As early as 1871, a major concern for the Los Angeles County Medical Association (LACMA) was the regulation of

[88] McWilliams, 98.

[89] For more on inventing Los Angeles (and the west more broadly) as a health destination, see John E. Baur, *The Health Seekers of Southern California, 1870-1900* (San Marino: Henry E. Huntington Library and Art Gallery, 1959); Natalia Molina, *Fit to be Citizens? Public Health and Race in Los Angeles, 1879-1939* (Berkeley: University of California Press, 2006); Sheila M. Rothman, *Living in the Shadow of Death: Tuberculosis and the Social Experience of Illness in American History* (Baltimore: The Johns Hopkins University Press, 1994); Alexandra Minna Stern, *Eugenic Nation: Faults & Frontiers of Better Breeding in Modern America* (Berkeley: University of California Press, 2005)

practice, and the punishment of those who engaged in irregular medicine or called themselves physicians when they lacked the proper credentials.[90]

In its constitutions and bylaws, LACMA stated that advancements, improvements, and contributions to the medical field were only possible through the separation of regular and irregular medicine. LACMA denied membership to any person who practiced irregular medicine. Similarly, any member found to have consulted with an irregular practitioner had his or her membership revoked.[91] With the support of the medical societies of the State, California passed the Act to Regulate the Practice of Medicine in 1876. This Act required all persons practicing medicine to submit themselves before their local Board of Examiners. If an individual was unable to furnish a diploma from a recognized medical school, he or she was subject to an examination. Only after this exam would the Board determine if he or she was competent in the healing arts.[92]

According to Pablo Mitchell, membership in professional societies grew increasingly important for physicians in the West.[93] Outside of the specter of traditional American civilization—"at the far, ragged end of the American empire"—physicians used membership in professional associations as a "vital link" to the rest of the physicians in the country. This "imagined community" of physicians nationwide facilitated the creation of a standardized community with oversight. These professional associations, and the networks they forged, denied

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[90] Vol. 1, Los Angeles County Medical Association Minute Books, 1871-1970, The Huntington Library, San Marino, California.

[91] California medical societies allowed female physicians to join their membership from the beginning. There was at least one woman member present at the LACMA's first meeting in 1871. In April 1876, the State Medical Society voted to admit women on the same basis as men. Later, in June of that same year, the American Medical Association admitted its first female physician to its ranks.

[92] John Long Wilson, M.D., "Medical College of the Pacific Established in 1872 and National Efforts to Reform Medical Education," *Stanford University School of Medicine and the Predecessor Schools: An Historical Perspective*, Stanford University Lane Library, elane.stanford.edu/Wilson/index.html.

[93] Pablo Mitchell, *Coyote Nation: Sexuality, Race, and Conquest in Modernizing New Mexico, 1880-1920* (Chicago: The University of Chicago Press, 2005).

its nonmembers access to a sense of modernity and legitimacy that membership created.[94] By positioning themselves as protectors of the profession, medical society members legitimized themselves in a way that secured their collective statuses as civilized regular physicians against a backdrop of irregular practitioners of medicine—like Chinese medicine men, black graduates of unrecognized medical colleges, and midwives.[95]

California's location and climate were enough to entice the rest of the country to visit, but gradually the tourism trade gave way to planned subdivisions, housing, and suburbanism when those people decided to stay. According to Carey McWilliams, between the 1900s and 1920s, Los Angeles began to resemble a village. Migrants in the early 20th century brought with them a desire to *settle* in Los Angeles. Former villagers and slum dwellers came to Los Angeles in order to build and buy homes. The boom of the 1920s, coupled with increasing industrialization, brought new migrants in search of industrial jobs. Over time, the migrants of the 1900s and 1910s would be members of the old guard as the 1920s and 1930s brought an onslaught of strangers, immigrants, or locusts—depending on who you asked.

Three factors mobilized migration to Los Angeles in the 1920s and 1930s: oil, movies, and the Great Depression. A surge in oil production during World War I meant that fabricators could not construct pipelines quickly enough. This exponential increase in oil production in Los Angeles resulted in increased oil shipments and ocean trade. Between Signal Hill, Huntington Field, and Santa Fe Springs, California's oil production ballooned. The discovery of oil also reflected the tenuous relationship that Los Angeles developers had with nature. The constant

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[94] Modernity in the sense that medicine, as a *profession*, had become increasingly specialized—and separate—from other trades. Though there were many religious physicians, the field, overwhelmingly, believed it was rational, scientific, and progressive. Medical associations and societies also operated a form of surveillance to ensure that its constituents adhered to the tenets of the profession. See Michel Foucault, *Discipline & Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage Books, 1995), esp. pages 170-194.

[95] Mitchell, *Coyote Nation,* 125-126.

battle between nature and civilization was most visible in efforts to irrigate the desert and pave the Los Angeles River. Planners built the city upon the foundation of white modernity—the ability to control and organize nature. William Mulholland's ventures in to the Owens Valley, for example, contributed to the growth of the city. His vision to divert and manipulate nature in an era when many cities still did not have running water reflected that Los Angeles was a city of innovation—where the future happened first.[96] The making of modern Los Angeles occurred simultaneously with the making and remaking of its ethnic past. While whites in Los Angeles worked to pave the landscape and civilize nature in order to make it suitable for other whites, they created a mythological past that attempted to reconcile its racial history. William Deverell and Phoebe Kropp have explained how Los Angeles' civic boosters reconciled the city's racial past through the use of an ethnoracial pseudo-historical myth—the Spanish Fantasy Past.

The Spanish Fantasy Past was exactly that—Spanish (not Mexican) and a fantasy. It worked to erase Mexicans from the region by making them relics of a romanticized, forlorn era. In doing so, whites were able to sweep aside a history of racial conflict in the era—specifically the Mexican-American War—and replace it with a narrative of progress and modernity. As opposite and contradictory as these two simultaneous visions of Los Angeles emerged—one modern, one quaint—they worked to support each other. According to Natalia Molina, the Spanish Fantasy past "left out Mexico's rule in the region and also omitted Indian societies' prominence before American, Spanish, or Mexican rule… Because [this script] emerged at a time of demographic decline in the Mexican population… there were few challenges to this

[96] "In 1890 only 24 percent of all American homes had running water. And not until the 1930s would the entire urban population have running water, while most of the rural population would not until after 1945." Suellen Hoy, *Chasing Dirt: The American Pursuit of Cleanliness* (Oxford: Oxford University Press, 1995), 15.

invented past."[97] Much like paving of the Los Angeles River domesticated the landscape for absorption into the American nation, the creation of a racial myth smoothed over a history of violence, conquest, and racism that the United States extolled in its imperial pursuits.[98] The Spanish Fantasy Past romanticized the area and tamed the people of the land in preparation for their incorporation. Simultaneously, the Spanish Fantasy Past worked to illustrate in a positive light how white Americans brought progress with them—fulfilling Richard Henry Dana, Jr.'s prophetic remark: "in the hands of an enterprising people, what a county this might be!"[99] Together, these two visions constructed a narrative about race and geography unparalleled anywhere else.

Southern California's geography also played an integral role in one of the other major factors compelling migration to the region: the film industry. Though film has a history extending into the 19th century, it did not become a popular mode of entertainment until the 20th century. Most of the history of film takes place on the east coast, but by the 1910s, a number of filmmakers made the journey to the West—among them, D.W. Griffith who is most famous for his film *Birth of a Nation*. Some of his earliest film like *Old California* and *Ramona* not only relied heavily on the Spanish Fantasy past—catering to the American desire to buy into the myth—but also were among the first motion pictures filmed in California.

To early filmmakers, Los Angeles was a safe-haven. Many of the first producers who came to California did so to escape legal action for violating patents. California was distant from the patent owners, and in the event of legal action, they knew they could easily escape to Mexico.

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[97] Natalia Molina, *How Race is Made in America: Immigration, Citizenship, and the Historical Power of Racial Scripts* (Berkeley: University of California Press, 2013), 27.

[98] Amy Kaplan, *The Anarchy of Empire in the Making of U.S. Culture* (Cambridge: Harvard University Press, 2005).

[99] Richard Henry Dana, Jr. "An American View of Mexican California," in *Two Years Before the Mast* (1840), available at: http://www.mhhe.com/socscience/history/usa/davidsonconcise/davidson02nonc_s/chap14psource.html

Once they got to California, however, the weather and landscape in southern California made it a prime filming location—bountiful sunshine and the availability of nearly every type of nature scenery within a couple hours' drive. The proximity to the border and the almost endless supply of cheap labor did not hurt, either. The introduction of sound to motion pictures helped the previously small colony of Edendale actors and producers elevate their statuses to technicians and industrialists. Soon, "Hollywood" became the motion picture capital, and motion pictures became the leading industry in Los Angeles from the 1920s-1940s.[100] Writers and artists also saw in Hollywood a place to make their mark and a living. It provided an opportunity for eccentrics to acquire gainful employment.

Some of these travelers came to Los Angeles with hopes of being discovered. As Hollywood spread its reach across the country, "Potential Juliets" left their homes and day jobs and waited in lines at studios in hopes of being discovered. After seeing the "kaleidoscope of pretty clothes, automobiles, gay suppers, beach-bathing, and a million other things…" in a picture show, their lives and aspirations would never be the same.[101] The film industry attracted throngs of young women to Los Angeles. At the same time, newspaper accounts lamented the pressures that young girls felt to look a certain way to get the part. Dr. Lulu Hunt Peters' *Diet and Health and Key to the Calories* had already debuted and became a sensation while her column in *The Los Angeles Times*, "Diet and Health," made her one of America's first diet spokespersons and weight-loss gurus.[102] Dr. Peters' dieting advice accompanied beauty tips and young women craving a job in Hollywood ate them up. One Chicago journalist wrote, that

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[100] McWilliams, 339.

[101] Rob Wagner, *Film Folk: 'Close-Ups' of the Men, Women, and Children who Make the 'Movies'* (New York: The Century Co, 1918).

[102] Chin Jou, "Calorie Counting," *Chemical Heritage Magazine*, Chemical Heritage Foundation (Spring 2011), vol. 29, no. 1, available at: http://www.chemheritage.org/discover/magazine/articles/29-1-counting-calories.aspx.

tourists to Hollywood could frequently "see the daily parade of the thousands of beautiful but starving girls who have come out to be stars in movies…"[103] Those girls who did get a job often found contracts with "weight clauses."[104] If a woman gained weight or got pregnant, she risked the chance of losing her relevance in an industry where flocks of girls each day sought to replace her. When, or if, these girls got pregnant while outside of their parents' supervision—working girls in cities or young girls on a quest to pursue an acting career—they became prime consumers for the illegal abortion industry. However, it was not just the "potential Juliets" who were having abortions, Hollywood also depicted abortions on the big screen. Films like *The Road to Ruin* (1928), *The 7th Commandment* (1932), *Men in White* (1934), *Gambling with Souls* (1936), *Dead End* (1937), and *Race Suicide* (1937) focused on demonstrating the connections between abortion and illegality, vice, corruption, and death.

In *Road to Ruin*, Ann Dixon was a sweet, innocent girl with two loving parents. She befriended Eve Monroe, a wild classmate with an absent and wealthy divorcée mother. During her friendship with Eve, Ann lost her virginity to Tommy, a classmate and friend of Eve's boyfriend. She changed. She began to drink and party. Eventually, Ann left Tommy for Ralph, a slightly older, more sophisticated man. One night, the police broke up a party where Ralph, Eve, Ann, and some of their friends were drinking, playing strip poker, and romping in a pool. The police took Ann and Eve back to the station where they were forced to undergo medical examinations. Ann was released as a "sex-delinquent," and Eve, also a "sex-delinquent," was forced to stay for treatment since her Wasserman test was positive for syphilis. After seeing the errors of her ways, Eve gained a new perspective on life. Ann, however, wished she were dead since her medical test revealed she was pregnant. Ralph told her he would not marry her and

[103] Richard Henry Little, "Barkless Airedales of Hollywood," *Chicago Daily Tribune*, October 28, 1923, E1.

[104] Antoinette Donnelly, "Reducing with the Stars," *Chicago Daily Tribune*, October 18, 1925, B4.

convinced her to have an abortion. He took her to an abortionist. Ann returned home following the procedure. Her mother grew concerned because Ann was feverish. Ann claimed it was just a headache. In the next scene, Tommy, Ann's ex-boyfriend, arrived claiming he heard about Ann and was sorry. Ann's father said she was very sick. There was no hope. She had "a clumsy, unsanitary operation…aggravated by some terrific shock." On Ann's deathbed, her mother begged Ann for forgiveness for having failed her. Ann grabbed both her parents' hands as she said, "it seemed like such a beautiful road, but it was only…" Her head fell as she passed and the viewer realizes that it was only a "road to ruin."[105] Clearly, the movies did not shy away from abortions. At the same time, it also created an opportunity for the illegal industry to thrive.

Finally, the Great Depression was another factor motivating migration to Los Angeles. A testament to the efficacy of southern California boosters, the broadcasted image of southern California as a land of boundless sunshine and a place of leisure and escape prompted the interminable droves of "Okies" and "Arkies" to the city.[106] The Great Depression hit farmers particularly hard. Though the federal government attempted to intervene through New Deal projects and legislation, unemployment remained a staggering problem. With little opportunities for subsistence in the Midwest, approximately 400,000 Americans abandoned their homes in farmlands and headed towards California with hopes of prosperity.[107] Californians cared little for these transplants and attempted to discourage their arrival with signs stating that there were no jobs, and there would be no state relief for non-residents. Despite the Los Angeles "Bum Blockade," a joint L.A.P.D. and L.A. Chamber of Commerce vigilante effort to keep the homeless out of California and Los Angeles, migrants continued to flood the state. Since

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[105] Willis Kent Productions, *Road to Ruin,* 1934, https://archive.org/details/TheRoadToRuin_457
[106] McWilliams.
[107] Jennifer D. Keene, et al, *Visions of America: A History of the United States* (Boston: Pearson, 2013), 671

Californians failed to discourage migrants from coming to the state, they looked for other ways to cut costs.

The Depression prompted a variety of cost-cutting endeavors in California—particularly the repatriation of Mexican "immigrants" and the compulsory sterilization of approximately 30,000 individuals.[108] State officials used economic arguments to justify these projects. Many American migrants found their ways into agricultural positions with other immigrants—Mexican, Japanese, Filipino, and Chinese workers. Unemployed whites put pressure on local government to hire "citizens" only. Some places enacted laws making it illegal to hire aliens. Others prioritized welfare and charity to native-born heads of households. The presence of a sizeable Mexican population disrupted the 1920s argument that Mexicans were "homing pigeons" who would return to Mexico. Rather, they were staying, settling, and reproducing in the United States. Concerned with this birthrate in an era of increasing xenophobia, eugenicists and public health officials used the blanket terms of "feeble-minded," "degenerate," and "immoral" to circumscribe the limits of non-white (and otherwise inferior) reproduction. Historian Natalia Molina attempted to explicate the correlation between the onset of the Depression with the racial scapegoating and racism pervading the Southern California landscape in the 1920s and 1930s, while Alexandra Stern and Miroslava Chávez-García have connected the sterilization of ethnic

[108] A letter from Los Angeles Mayor Frank Shaw to members of the Los Angeles City Council dated July 23, 1937 read: "I wish to state that during the time I was a member of the Los Angeles County Board of Supervisors many hundreds of thousands of dollars of public funds were saved annually through repatriation of migratory indigents who came to us from other parts of the United States and from Mexico. Under the State Welfare Act as amended in 1933 which requires residence in the County for one year and in the State for three years before an individual is eligible to public aid, our practice was to give indigent transients such emergency assistance as might be necessary to prevent suffering from want of food and clothing, and then to return them promptly to their communities of legal residence where the responsibility for their care properly belonged. By so doing, and adhering to the provisions of the Social Welfare Act, we protected the interests of our own citizens, of whom there are approximately 88,000 employables now dependant[sic] upon relief in this County. Indigent transients are usually willing to accept jobs at a much lower rate of pay and lower standard of working conditions that our own residents expect, which makes enforcement of the Welfare Act necessary for the defense of jobs and employment for our own citizens, as well as saving millions of dollars in taxes." Los Angeles City Council Files, 1937-3014. City Archives and Records Center. Los Angeles, California.

Mexicans to concerns about eugenics and criminal heredity, respectively.[109] In "repatriating" Mexicans—many of whom were actually U.S. citizens—the government helped native-born whites find employment by eliminating racialized forms of competition. Some Mexicans chose to return to Mexico because they faced an increasingly hostile environment and decreased access to food relief. Arrest and deportation compelled others. According to historian George J. Sánchez, about a third of the Mexican community in Los Angeles returned to Mexico during the 1930s while those who stayed "became ambivalent Americans, full of contradictory feelings about their place in American society."[110]

Similarly, initiatives for compulsory sterilization relied on financial justifications. While Margaret Sanger's initiatives may have unnerved some when her target audience was young, middle-class white women, there were other instances in which reproductive control did not raise as many eyebrows. In fact, at the same time that Margaret Sanger was campaigning for increased access to birth control, there was an upsurge in the number of irreversible surgical eugenic procedures. Compulsory sterilization—tubal ligations for women and vasectomies for men—began in earnest in the United States in 1906 after Indiana became the first state to legalize the procedure. Though California legalized compulsory sterilization soon after, it did not perform the vast majority of its procedures until the 1920s and 1930s. Social scientists, physicians, and eugenicists believed that compulsory sterilization was a fiscally conservative action. In ordering the compulsory sterilization of the eugenically unfit, or those who were likely to become (or produce) public charges, the state could save thousands of dollars on the costs of institutionalization. Dr. Leo Stanley medical superintendent of San Quentin Prison sterilized

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[109] See Stern, *Eugenic Nation*, and Miroslava Chávez-García, *States of Delinquency: Race and Science in the Making of California's Juvenile Justice System* (Berkeley: University of California Press, 2012).

[110] George J. Sánchez, *Becoming Mexican American: Ethnicity, Culture and Identity in Chicano Los Angeles, 1900-1945* (Oxford: Oxford University Press, 1993), 210.

inmates in the 1930s, while people like Paul Popenoe—sterilization advocate-turned marriage counselor—believed that families on state charity should receive contraceptive material since they were unlikely to produce quality offspring.[111] The same economic factors compelling Los Angeles officials to deport Mexicans facilitated the "novel… way in which eugenicists linked biological inferiority to the abuse of state resources, a connection reinforced by the Deportation Agent and during the exclusionary purge of the Great Depression."[112] The impacts of the Depression, coupled with pressure from the Department of Institutions led those same officials to say that poor whites and ethnic Mexicans possessed a type of biologic inferiority that rendered them incurable. In a time of increased cost-consciousness, Mexicans, the poor, disabled, or otherwise eugenically "unfit," became burdens on Los Angeles's already stressed health and charity institutions.[113] As such, it would appear contraception—writ large—was not the problem. Instead, birth control—not having children—was only a problem when the women abstaining from childbearing were young, native-born, white, Protestant, and without disease or defect. Taken together, these contextual puzzle pieces illuminate how reproduction, sexuality, and race were matters of political and social debate. They also illustrate that reproduction was not merely a private journey for the parents-to-be (or not-to-be) but that politics had a stake in the minutiae of reproduction. Women's bodies—under these premises—never fully belonged to themselves. They belonged to the state. Furthermore, we have established that bodies, health, and medicine were a cornerstone of early California.

When the State of California implemented its abortion statute, it did so before the growth and development of California's fringe medical community. California's original abortion statute read:

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[111] Stern, 110, 112.
[112] Ibid., 113.
[113] Molina, *Fit to be Citizens*? 117.

> …every person who shall administer or cause to be administered or taken, any medicinal substance, or shall use or cause to be used any instruments whatever, with the intention to procure the miscarriage of any woman then being with child, and shall be thereof duly convicted, shall be punished by imprisonment in the State Prison for a term not less than two years, nor more than five years: *Provided*, that no physician shall be affected by the last clause of this section, who, in the discharge of his professional duties, deems it necessary to produce the miscarriage of any woman in order to save her life.[114]

In this reading of the law—" *Provided*, that no physician shall be affected by the last clause of this section"—physicians were not culpable of performing abortions when they determined it was medically necessary to protect the life of the mother. If, for example, a woman had attempted her own abortion and had failed, a doctor might determine it to be necessary to complete the abortion for the woman's health and safety. An unintended consequence from this line of legal thought suggested that regular, mainline physicians could do no wrong. Physicians who were either compelled by financial gain or human interest had little to lose in the event that they came before a judge or the medical board. The minor legal hurdles that could arise, with the potential for high profits, led to the rise of the physician-abortionist in California and leads us to Delphine Walsh and Vera Nelson.

Delphine Walsh was born to Mr. and Mrs. Thomas Dougherty in the mining town of Bisbee, Arizona—a town 90 miles southeast of Tucson, braced against the United States-Mexico border. The copper mining town became one of the most profitable mining sites in the West and housed "the largest city between St. Louis and San Francisco."[115] Delphine's father was a copper miner, and while the industry thrived in the late 19th and early 20th century, she was born shortly before the 1908 fire devastated their community. The town survived the fire and rebuilt. Even though the copper industry remained strong in the area, Delphine's parents found themselves unable to care for her any longer when she was about six-years-old. Perhaps her father had

[114] Crimes and Punishment Act § 45 (Stats 1850 ch 99 § 45), as amended Stats 1861 ch 521 § 1.
[115] Bisbee History, www.discoverbisbee.com.

injured himself in the copper mines and found himself unable to continue with the physical effects of a taxing, rigorous job.[116] Or, it is possible the Mexican Revolution sparked an influx of capable male workers to the border town—increasing job competition and driving down wages.[117] We may never know why her previously capable parents suddenly found themselves unable to care for Delphine; but soon enough, Mrs. Mae Walsh adopted the young girl. Mrs. Walsh put Delphine in dance lessons where she thrived. They eventually moved to Los Angeles where the flourishing dancer had plans of fame. Delphine became popular rather quickly and was soon "well on the road to a profitable position in the theatrical world" working with Franchon & Marco, renowned Los Angeles theatrical producers, and touring with "Hollywood Scandals," a burlesque that traveled the East Coast.[118] She became a Hollywood socialite, and befriended actresses and other movie personalities. Just days before the abortion that claimed her life, Walsh was flown from Hollywood to San Francisco for a party. Delphine Walsh died in 1929 in Glendale, California following complications from an illegal operation.[119]

The search for the man responsible for Delphine Walsh's "condition" led the police and the Board of Medical Examiners to search Hollywood's motion picture and theatrical circles—much to the delight of newspaper readers everywhere, but definitely not for the first time.

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[116] 1910 recorded the highest number of major mine disasters in the U.S. up to that point with 19 coal mining disasters and 6 metal/nonmetal mining disasters. 1910 was also the first year that the Pullman Company made mine rescue railroad cars. In the first 5 years of their use, there were "300 mine accidents, including explosions, fires, and cave-ins." See Gerald E. Sherard, "Arizona Fatal Mining Accidents, 1912-1929," 2007, http://digital.denverlibrary.org/cdm/ref/collection/p16079coll16/id/449.

[117] Writing about the copper mines in Morenci and Clifton, Arizona (about 100 miles north of Bisbee), Linda Gordon stated that Mexicans made "ideal workers" in the mining industry because "their labor power fell on a different economy and society, Mexico… The migrant laborer, straddling two nations and two economies, could view the dollars in his weekly pay envelope in terms of what they could buy in Mexico… [accepting] wages half to two-thirds those of 'America' workers and that they had to pay 'American' wages for only a limited number of skilled positions." From Linda Gordon, *The Great Arizona Orphan Abduction* (Cambridge: Harvard University Press, 1999), 57.

[118] "Tragedy Halts Delphine Walsh's Rise from Obscurity" *Los Angeles Times*, May 11, 1929, A3, and various playbill listings and announcements in newspapers.

[119] There are some conflicting dates in the sources. Some claim she saw Drs. Traxler and Lanterman on April 27, 1929 and died April 29, 1929 while the majority of the sources claim she died on May 2 or 3, 1929 (late night/early morning).

According to historian Lois Banner, "the theatrical community comprised a separate subculture… one whose practitioners kept to themselves… In their world the regular social classes were all confused, with crude stagehands and set builders assuming a fraternity with … dramatic actresses."[120] Just a few years earlier, this small community came under the microscope in the Fatty Arbuckle Trials.

In 1921, Roscoe "Fatty" Arbuckle hosted a party at the St. Francis Hotel in San Francisco. Arbuckle was one of the most popular comedians of the silent film era, and a top star at Paramount Studios.[121] Word of the party spread to a number of people connected with the motion picture industry. Two of the women in attendance that night were actress Virginia Rappe, and her friend, Maude Delmont. One account suggested that Rappe drank too much, became ill, and died at a nearby hospital of an inflammation caused by a ruptured bladder. In the other account, Delmont alleged that Arbuckle sexually assaulted Rappe, inadvertently causing her death. Arbuckle, who did not earn the nickname "Fatty" from his penchant for exercise or portion control, weighed approximately 260 pounds. The prosecution argued that Arbuckle's heft atop poor Virginia Rappe caused her ruptured bladder.[122]

The incident split the motion picture industry—with "one group convinced of the big comedian's blameleness and determined to aid him to clear his name, and the other equally determined to 'see justice done.'"[123] Lambasting Arbuckle, Henry Lehrman, film director and Rappe's fiancé, exclaimed: this "is what results from making idols and millionaires out of people

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[120] Lois Banner, *American Beauty: A Social History… Through Two Centuries of the American Idea, Ideal, and Image of the Beautiful Woman* (Los Angeles: Figueroa Press, 2005), 183-184.

[121] Gary Alan Fine, "Scandal, Social Conditions, and the Creation of Public Attention: Fatty Arbuckle and the 'Problem of Hollywood,'" *Social Problems*, vol. 44, no. 3 (Aug. 1997), 300.

[122] Scott P. Johnson, "Fatty Arbuckle Trials (1921-1922)," *Trials of the Century: An Encyclopedia of Popular Culture and the Law* (Santa Barbara: ABC-CLIO), 242-243.

[123] "Murder Charge Placed Against Fatty Arbuckle," *Indianapolis Star*, September 12, 1921, 1.

that you take from the gutter."[124] The result of the trial put Hollywood, the motion picture industry under intense public scrutiny. Newspaper journalists clamored to find sensational stories about Hollywood parties. Banner stated that performers' private lives became public—and publicized—as "free and easy."[125]

> One authority high up in the theatrical world remarked: "The motion picture stars have been riding to a fall for a long time. The recent blackmail case… the suppressed story of a prominent magnate's affair with a local stenographer, and the Arbuckle arrest are only the beginning. The whole picture industry is aware of what goes on … [in] Hollywood… Stories of drug parties, liquor parties, and other forms of debauchery by certain individuals at various parties throughout the country are no longer new.[126]

In the aftermath of Virginia Rappe's death—for which Arbuckle was eventually acquitted—the film industry went on the attack against allegations that they were particularly immoral. *The Billboard* newsletter urged Hollywood to "purge" the trade of "those intruders whose actions have brought only discredit upon the film industry."[127] The writer continued, "REAL ACTORS and REAL ACTRESSES should pit their power against the invading army of infected worms, stamp them out and prove to the world that the motion picture colony, whether it is in New York, Fort Lee, or Hollywood, is not a retreat for the immoral and depraved."[128] Reformers believed that a thorough federal investigation of the film industry would reveal "debauchery behind the screen worse than that shown in the most extreme sex plays."[129] These reformers claimed that a small circle of men held the entire industry in their hands. As a result, they titillated the public with immoral motion pictures, and they preyed on young women whom

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[124] Ibid., 2.
[125] Banner, 183.
[126] "Murder Charge Placed Against Fatty Arbuckle," 2.
[127] Marion Russell, ed., "Drive Out the Rotters From the Film Industry," *The Billboard*, vol. 33, no. 39, September 24, 1921, 104.
[128] Ibid.
[129] "Movie Morals Under Fire," *New York Times*, February 12, 1922, 80.

they forced to "perform immoral acts in order retain their business positions."[130] This small oligarchy of men ruling the film industry threatened to undermine the entire American system with their immoral lifestyles, business practices, and films.

According to Gary Alan Fine, scandals—like that of Fatty Arbuckle—"refer to public and media perceptions of specific behaviors and events that deserve moral opprobrium."[131] Their link to an institution—like Hollywood or the film industry—often results in a "breach in institutional trust."[132] "Moral decay" and "a breakdown of moral consensus" characterized the early twentieth century.[133, 134] Nowhere was this more visible than in motion pictures, which often represented changes in American sexual practices dramatically. Hollywood—and by extension—the film industry represented the antithesis of moral, small-town life. Hollywood represented pleasure, consumption and fantasy on the surface, but just below, cases like those of Fatty Arbuckle and Delphine Walsh demonstrated the instability and falsity of its sumptuous façade.

On Delphine's deathbed, police and the hospital secured a dying declaration in which she named Drs. Traxler and Lanterman as the physicians responsible for her illegal operation. Dr. Lanterman was no stranger to the law in Los Angeles. Formerly a Los Angeles County Coroner, Lanterman left his position disgraced after an incident with his mistress—a Mills Seminary graduate nicknamed "Suicide Ida" because she threatened to kill herself every time one of her boyfriends ended their torrid love affairs. Lanterman's lover, Ida Hastings, called the police and

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[130] Ibid.
[131] Fine, 297.
[132] Ibid., 298.
[133] Ibid., 304.
[134] For example, the Mann Act/White Slave Act Panic of the early 1910s and the effect that World War I played in the general acceptance of prophylactics. See David J. Langum, *Crossing over the Line: Legislating Morality and the Mann Act* (Chicago, The University of Chicago Press, 1994) and Andrea Tone, "Making Room for Rubbers: Gender, Technology, and Birth Control Before the Pill," *History & Technology*, vol. 18, no. 1 (2002), 51-76.

claimed that the doctor had attacked her. When the police arrived, Lanterman had hid himself in Ida's bathroom and refused to come out. Once he finally emerged (in custody), the police determined he was drunk and in possession of two revolvers. Though the charges were eventually dropped, local prosecutor E.J. Flemings demanded Lanterman's dismissal because of an 1880 law that called for the dismissal of public officials caught intoxicated while on duty. Lanterman resigned and was soon indicted on other charges—including falsifying miscellaneous expense statements to the Board of Supervisors. He was initially sentenced to a one-year prison term, though this conviction was overturned on appeal.

In 1916, Lanterman's name came up in the investigation into 17-year-old Elizabeth Johnson's illegal abortion. He claimed the allegations were false; that they were part of a conspiracy to put him out of business.[135] He was indicted. While he was not found guilty, the Board of Medical Examiners did revoke his license. Later, when Mrs. Regina Greenburg of San Francisco lay on her deathbed, she named Dr. Lanterman in her dying declaration as the physician who performed her illegal abortion. Due to a conflicting report she gave that said she performed the procedure on herself—Lanterman was found not guilty. Finally, in 1918, Lanterman was accused on contributing to the delinquency of a minor, Marjorie Woodbury, when he took the woman to Malibu for a weekend. After a petition drive, he finally regained his medical license in 1921.[136]

While Dr. Lanterman had his fair share of interactions with the police and the medical board before Delphine Walsh, Dr. Paul Traxler did not. He was a relatively obscure figure until this incident. Dr. Traxler was born in 1893 and was a veteran of the First World War. In early

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[135] "Dr. Lanterman Under Arrest," *Los Angeles Times*, July 20, 1916, II1.

[136] "Coroner Attacks Woman and is Jailed" *Los Angeles Times*, Dec. 18, 1907; Larry Harnisch, "What's in that Embalming Fluid" *The Daily Mirror*, December 18, 2006; and "Dr. Lanterman Loses License," *Los Angeles Times*, Oct. 7, 1916, I13.

May 1929, Drs. Traxler and Lanterman, were accused of causing the death of 22-year-old Delphine Walsh "after an asserted operation" in Glendale, California.[137] According to reports, Miss Walsh implicated the two doctors on her deathbed—claiming Dr. Lanterman administered the anesthetic and Dr. Traxler performed the operation. Despite the police inquiry on her deathbed, Miss Walsh refused to name the man responsible for her pregnancy.

With Drs. Traxler and Lanterman already charged and released on bond, the police began to search for the man responsible for her pregnancy. According to Leslie Reagan,

> at inquests into abortion deaths the state reinforced the norms requiring men to marry the women whom they impregnated. Through arrests, incarceration, interrogation, and prosecution, unmarried women's lovers were punished for illegal abortions as well as for their illicit sexual behavior…reveal[ing] the implicit assumption of state authorities that unwed women who had had abortions had been forced to do so because their 'sweethearts' had refused to marry.[138]

This practice of penalizing men continued through the 1930s, with some former lovers even being sent to prison for their part—whether it was refusal to marry the girl, or providing money for an abortion.

By May 8, 1929, southern California BME special agent William Byrne maintained that they had a particular man in mind, but that they were keeping his name secret until they located and interrogated him.[139] One of the main clues, special agent Byrne asserted, was an "endearing letter" Miss Walsh received that supposedly contained a large sum of money in it. The investigators believed that this money was used to pay for the procedure, and that the man who sent it, a supposed millionaire in Vancouver, British Columbia—where Miss Walsh had taken a short trip—was the man who was responsible for her pregnancy. Dorothy Neff, a dancer friend of Miss Walsh, said they befriended a wealthy theater owner while they were working in

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[137] "Physicians Face Death Complaint," *Los Angeles Times*, May 5, 1929, D8.
[138] Reagan, *When Abortion Was a Crime*, 131.
[139] "Dancer's Death Quiz Continues," *Los Angeles Times*, May 8, 1929, A12.

Vancouver. The man took a liking to Walsh and even promised to take the two girls to Hawaii. Investigators continued to search for the man, and continued to interrogate Miss Walsh's friends, Natalie Joyce and Mildred Harris. The search remained fruitless—unable to find the letter that supposedly carried the money or the mysterious Vancouver millionaire who purportedly sent it.[140]

Local prosecutors prepared for trial, and Drs. Traxler and Lanterman were charged with the murder of Delphine Walsh. During the trial, the defense attempted to have Miss Walsh's dying declaration tossed, claiming she did not truly believe she was dying when she signed it. Furthermore, the doctors declared that they had their own document, signed by Miss Walsh, stating, "she had attempted to perform the operation herself and was responsible for her [own] condition."[141] With the help of a surprise witness, Mrs. Arline Morgan, the defense had an ally who testified that Miss Walsh self-induced the abortion and only came to them once her condition worsened. According to Mrs. Morgan, Dr. Traxler's office assistant, Miss Walsh admitted to performing a procedure on herself before the doctors administered the anesthetic and treatment in order to prevent an infection.

The jury deliberated and did not find either of the doctors guilty. However, their troubles were not over. Within weeks of the jury's verdict, the California Board of Medical Examiners called Drs. Traxler and Lanterman to their meeting to make their cases for why they believed their licenses should not be revoked.[142] On October 23, the Board dismissed their case against Dr. Lanterman on account that they did not believe they had enough evidence to charge him with

[140] "Dead Dancer's Letter Sought," *Los Angeles Times*, May 9, 1929, A5; "Tragedy Halts Delphine Walsh's Rise from Obscurity;" "Dancer Clews Lead Nowhere," *Los Angeles Times*, May 10, 1929, A5.
[141] "Legal Debate Delays Trial," *Los Angeles Times*, Aug. 29, 1929, A2.
[142] "Twelve Doctors Accused," *Los Angeles Times*, Oct. 3, 1929, 8.

"performing or aiding an illegal operation."[143] However, shortly thereafter, the Board revoked Dr. Traxler's license. Dr. Traxler's defense argued that he technically did not perform the illegal operation that resulted in Miss Walsh's death—that he took the case after the fact, and that he was not responsible for her death.

Relying on the dying declaration the hospital obtained and two nurse witnesses, the State BME believed there was sufficient evidence to assert that he performed the procedure. Dr. Traxler appealed the Board's decision immediately and appeared before the Los Angeles Superior Judge with a writ compelling the Board to void the revocation. Meanwhile, Dr. Lanterman faced the Board again, this time for charges of "unprofessional conduct" in relation to the Walsh case. For these charges, Dr. Lanterman's license was revoked on February 6, 1930. Dr. Lanterman continued to appeal, and by 1945, his name was listed in the Board of Medical Examiners' directory of active physicians, Dr. Traxler continued to appeal, arguing his revocation was a form of double jeopardy since the initial court found him not guilty.[144] His efforts remained futile. Especially once the Board—in reference to another case of illegal operation—ruled, "acquittal of a doctor by a jury on a charge of murder assertedly the result of an illegal operation does not bar the Board of Medical Examiners from revoking the practitioner's license on the same accusation."[145] The judge ruled that this was not double jeopardy; rather it was about protecting society, the medical profession, and consumers. However, by 1945, Traxler's name was also back in the California Board of Medical Examiners' directory of physicians in the State.

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[143] "Medical Board Dismisses Case," *Los Angeles Times*, Oct. 23, 1929, 8.

[144] "Doctor Asks Court to Lift License Ban," *Los Angeles Times* April 15, 1931,19, and "Medical License Plea up Today," *Los Angeles times*, April 24, 1933, 5.

[145] "Ousted Doctor Loses in Court," *Los Angeles Times*, September 22, 1930, A3.

Shortly after the Delphine Walsh case settled, another highly publicized case of death-by-illegal-abortion stunned Los Angeles County. Young Vera Nelson, an 18-year-old student at Los Angeles High School made her way into the consciousness of Southern California's reading public when she died in Hermosa Beach, California just a day after acquiring an illegal abortion. The petite blond, who the coroner believed would have given birth in approximately three months if she had not been operated on, allegedly met her death at the hands of the reclusive Dr. William C. Fiske, a 70-year-old physician with failing health who attempted suicide when he realized that we was going to be charged with murder.

The story broke out when Fiske didn't come home for dinner. Mrs. Fiske sent Barney Briggs, their son-in-law, to the doctor's office to retrieve him. When Briggs got to the office, he found the door locked. Assuming he must had just missed his father-in-law, he returned to the Fiske home. But Dr. Fiske did not show up. After dinner, Briggs and Mrs. Fiske returned to the office. When she unlocked the door, they found Dr. Fiske "lying on the floor with a gas tube in his hands." When Briggs grabbed the tube and turned off the gas, the doctor begged that they let him die. Briggs went to the police station, and when the police returned they found that Dr. Fiske had turned the gas back on and had reinserted the tube into his mouth. Police turned off the gas and removed the tube from the semi-conscious doctor's mouth. A note on the office door read: "Mr. Nelson—you will find me in front office. It is gas-filled. Care! Operation failed. Too far advanced."[146] Upon conducting a search of the office, the police found the body of Miss Nelson in the back room.

The police began their search for the "betrayer" responsible for Vera Nelson's condition. Sifting through her diary, police wove together the story of a young, troubled girl who was

[146] "Youths Named in Dead Girl's Diary Sought in Murder Inquiry," *Los Angeles Times*, September 23, 1930, A12.

popular with the boys, but who failed to get along with her parents. She was unhappy at home and frequently mused about getting a job and leaving for good. The newspaper painted a picture of Nelson as a spoiled, promiscuous girl who found happiness in the company of the "dozen youths" whose names appeared in her diary as objects of her amusement or affection.[147] Based on her diary, the police learned of a particular love affair with a boy she referred to only as "Mac" that ended just days before she first visited Dr. Fiske in Hermosa Beach on September 16. Police hoped to use this diary as a roadmap to uncover which of these boys was the one who betrayed the young girl, forcing her to see the doctor.

Once Dr. Fiske recovered from his suicide attempt, he told the investigators that Miss Nelson came to him distraught. She claimed her health would not allow her to be a mother—that she looked run-down, worried, and stressed. He stated that he took pity on the girl and hoped to relieve her of her condition.[148] Dr. Fiske was not present at the coroner's inquest and refused to make further statements. The inquest found that on September 21, Vera Nelson met her death after Dr. William C. Fiske performed an illegal operation. Vera's mother, Mrs. Nelson testified that she thought her daughter was seeing Dr. Fiske for treatment of a tumor and she suspected something was wrong when Vera did not return the next day as planned. According to the police and the detectives who conducted the investigation, Dr. Fiske had said that it was his sympathy for Miss Nelson that got him in trouble. He claimed she had visited him two or three times, begging for the procedure,

Dr. William C. Fiske

"Doctor Enters Plea of Guilty," *Los Angeles Times,* February 4, 1931, pg. A8.

[147] Ibid.
[148] "Evidence Ready in Girl's Death," *Los Angeles Times*, Sep 24, 1930, A5.

before he finally relented. However, this was the only statement he provided. Dr. Fiske refused to testify in the proceedings that followed.[149] He remained in custody after he made a full recovery and was released straight from the hospital ward to the local jail. He was indicted by the county grand jury on October 31. Though the indictment initially suggested he be held without bail, he was held on a $10,000 bail that dropped to $5,000 on October 15.

Dr. Fiske's health continued to deteriorate over the course of the trial, causing multiple delays in the proceedings. Dr. Fiske's trial finally began in early December. When he took the stand, he testified that Miss Nelson died because of an accident in his operating room while he was performing his "legitimate duties of a physician."[150] He stated that he was helping her with complications resulting from her attempting to perform the operation on herself. Dr. Fiske's defense received a boost once the judge received an anonymous letter from a girl claiming to be Vera's friend. In the letter, the girl the attorneys referred to as "Birdie" stated she witnessed Miss Nelson attempt to self-abort before she had her final visit with Dr. Fiske. The defense's physicians testified that Miss Nelson's cause of death could have very easily been a result from a complication from an ailment already plaguing her before her visit with Dr. Fiske.[151] The jury deadlocked, eight finding Dr. Fiske guilty. The judge immediately slated Dr. Fiske's case for a retrial the following February. Instead of going through the new trial, Dr. Fiske agreed to plead guilty to manslaughter. Perhaps because of his age, the judge allowed Dr. Fiske to apply for probation, and in May 1931, Dr. Fiske was placed on ten years of probation.[152] He passed away in 1941.

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[149] "Doctor Blamed in Girl's Death," *Los Angeles Times*, Sep. 27, 1930, A2.

[150] "Doctor Tells of Girl's Death," *Los Angeles Times*, Dec 10, 1930, A19 and "Dr. W. C. Fiske Goes to Trial," *Los Angeles Times,* Dec 9, 1930, A8.

[151] "Girl Hunted in Death Case," *Los Angeles Times*, Dec 11, 1930, A8 and "Dr. Fiske Case Jury Locked Up," *Los Angeles Times*, Dec 13, 1930, A2.

[152] "Medical News" *Journal of the American Medical Association*, vol. 96, no. 21, 1802.

During the frenzy of Delphine Walsh's case, Harry Carr wrote in his popular column "The Lancer:"

> I don't know what the moral of the sad story is. Miss Delphine Walsh moved out of Brewery Gulch in Bisbee, Ariz., to Hollywood. Instead of fame she found a disgraceful death. The inference is that, had she remained in Bisbee, she would by now have been the proud and happy wife of a time-keeper in the copper mines and perhaps been the chairman of the sub committee on arrangements where the Rotarians next performed. Alas, I fear when their heels get high and they carry the same lip stick that Clara Bow uses and take the movie magazines home to bed with them, then Brewery Gulch and even the blissful domestic life in the cottage on the side of an Arizona mountains no longer has a seductive echo. I don't know anything that can be done with them except lock them up or let them come to Hollywood.[153]

To men like Carr, the tragedies that befell Delphine Walsh and Vera Nelson were not limited to their deaths. Rather, they were also tragedies of failed patriarchal control amid the changing status of women in the 20th century. According to Catharine MacKinnon, "sexuality is to feminism what work is to Marxism: that which is most one's own, yet most taken away."[154] As such, it is the center of feminist discussions, and the core of inequality. Even though sexuality and reproduction are intensely personal, they are political.

> Feminism fundamentally identifies sexuality as the primary social sphere of male power. The centrality of sexuality emerges not from Freudian conceptions but from feminist practice on diverse issues, including abortion, birth control, sterilization abuse, domestic battery, rape, incest, lesbianism, sexual harassment, prostitution, female sexual slavery, and pornography… Taken together, they are producing a feminist political theory centering upon sexuality: its social determination, daily construction, birth to death expression, and ultimately male control.[155]

A woman's decision to abort without legal sanction was a form of violence to understood patriarchal control over women's reproductive sexuality. According to Linda Gordon, birth control is central to female emancipation. Men are invested in its control because it has

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[153] Harry Carr, "The Lancer" *Los Angeles Times*, May 14, 1929, A1.

[154] Catharine A. MacKinnon, "Feminism, Marxism, Method, and the State: An Agenda for Theory," *Signs: Journal of Women in Culture and Society* (1982), vol. 7, no. 3, 515.

[155] MacKinnon, 529.

"consequences for two social issues crucial to overall societal development: sexual activity and population size. Birth control bears, too, on a third social phenomenon: the role of women" and is a tool that women can utilize to control their "only significant biological disadvantage."[156]

Abortion reflected women's rebellion. It suggested that women rejected what many men assumed to be their primary social duty—bearing children—and that they were willing to rebel at whatever cost. If women left their spheres of motherhood and the home, it would destroy society. According to Carr, increasing autonomy and the glorification of Hollywood resulted in the demise of domesticity. That because of this, women no longer found happiness in marrying the "time-keeper in the copper mines" or being "the chairman of the subcommittee" of whatever organization. Sadly, these young women's lives and early deaths were quintessential examples of Los Angeles' noir, and all-too-common narratives of new starts followed by catastrophic ends.[157] They provide us a "counterweight to the dreamier aspects of the movies' fantasy life, a corrective to the endless happy endings promised by celebrity and glamour."[158]

The idea to prosecute the men responsible for impregnating the girls who died from an abortion suggested that women only sought abortions if their lovers and sweethearts suddenly jilted them. It failed to give credence to women's concerns or desires, or even suggested that they had none. Prosecuting the men who impregnated these women echoed patriarchal concerns about women's roles, it emphasized sex for procreation, and encouraged men to step up to their place at the heads of new families. While choosing to have an abortion may, for some women, have been a consequence of a lover refusing to partake in his responsibility, more frequently it was a direct result of women's desires to exert reproductive control over their own bodies.

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[156] Linda Gordon, *Woman's Body, Woman's Right: A Social History of Birth Control in America* (New York: Grossman Publishers, 1976), 3, xii.

[157] David Fine, *Imagining Los Angeles: A City in Fiction* (Reno: University of Nevada Press, 2000), 54.

[158] Ulin, xvii.

Despite the fact that abortion remained illegal, women continued to procure them—either at the hands of others or by they own means. Knowing this, Drs. Traxler, Lanterman, and Fiske all claimed that Delphine Walsh and Vera Nelson attempted to self-induce their own abortions. Whether or not it was true, self-induced abortions were a reality that these doctors knew, exploited, or had to wrestle with. For in a final moment of desperation, nothing could stop a woman from tampering with her own body.

The practice of self-induced abortion reflected earlier ideas of pregnancy as a women's experience. Delphine Walsh and Vera Nelson's cases also illustrate how some women attempted to assert their autonomy by inducing abortion. It required more than a little resolve for a woman to submit herself to an unknown, illegal procedure. However, for a woman to perform the procedure on herself indicated a degree of commitment to terminating the pregnancy. If she could find no one else to perform the procedure, she ultimately decided to do it herself. Even when surgical abortion was at its peak in the 1930s, self-induced abortion remained common practice, and in reality, they remained the most dangerous method of procuring miscarriage—especially when it involved introducing instruments into women's bodies or self-injury to procure miscarriage. Hospitals would often have to create septic wards of infected wards from women dying or recovering from "infected uteruses, sepsis, shock, jaundice and massive blood loss—the aftermath of unsafe and illegal abortions."[159]

[159] Tiana Bakíc Hayden, "Private Bleeding: Self-Induced Abortion in the Twenty-First Century United States," *Gender Issues* (2011) 28, 210.

Table 1 (All fiscal years run from July 1 to June 30)

FISCAL YEAR	TOTAL # OF CORONER CASES	# OF ABORTION CASES	SELF-INDUCED	BY PHYSICIAN OR MED PROF*	OTHER	AGE: 10-20; 20-45	MARITAL STATUS
1927-1928	3756	20 (.532%)	5	3	2 undetermined; 4 spontaneous; 1 by fall to floor; 5 by instruments induced by unknown person	7:13	N/A
1928-1929	4174	28 (.671%)	19* (2 partial)	2	2 criminal, by known person; 1 criminal, by unknown person; 1 by fall to floor; 1 spontaneous; 2 undetermined	0:28	N/A
1929-1930	4254	31 (.729%)	13	5	4 criminal by unknown person; 2 spontaneous; 1 by fall to floor; 6 undetermined	1:30	N/A
1930-1931	4603	33 (.717%)	17	4	1 by fall; 3 criminal by unknown person; 4 undetermined; 4 spontaneous	6:27	N/A
1931-1932	4604	28 (.608%)	16	4	1 criminal by known person; 3 criminal by unknown person; 2 spontaneous; 2 undetermined	4:24	23 married; 4 single; 1 divorced
1932-1933	5059	28 (.553%)	13	4	1 criminal by known person; 2 by fall; 1 criminal by unknown person; 3 spontaneous; 4 undetermined (2 criminal or self-induced; 2 self-induced or spontaneous)	3:25	24 married; 4 single
1933-1934	5083	21 (.413%)	15	1	3 criminal by unknown person; 2 spontaneous	0:21	18 married; 3 single
1934-1935	5315	25 (.470%)	15	2	2 spontaneous; 3 criminal by known person; 3 undetermined (self-induced or criminal)	3:22	18 married; 2 single; 4 widowed; 1 divorced
1935-1936	5377	29 (.539%)	13	4	2 criminal by known person; 1 criminal by unknown person; 5 self induced or criminal undetermined; 4 spontaneous	6:23	23 married; 5 single; 1 divorced
1936-1937	6070	15 (.247%)	11	1	1 self-induced or criminal undetermined; 2 criminal by unknown person	3:12	9 married; 4 single; 1 widowed; 1 divorced
1937-1938	5783	20 (.346%)	9	-	4 spontaneous; 2 septic; 5 criminal or self-induced undetermined	0:20	17 married; 1 widowed; 1 divorced; 1 single
TOTALS	**54,078**	**278 (.514% of total, actual)**	146 (52.52%)	30 (10.79%)	102 (36.69%)	33 : 245 (11.87%) : (88.13%)	132 married; 23 single; 5 divorced; 6 widowed **(of 166 abortions this data is available for)**

Annual reports form the Los Angeles County Coroner allow us to paint a picture of the women procuring abortions, and the types of abortions that typically landed these women on the coroner's autopsy table. From 1927 through 1938, 278 women in Los Angeles County had "Abortion" listed as their official cause of death.[160] This number (278) represented .514% of the 54,078 total investigations that the coroner's office investigated during that same period. For the sake of comparison, during that same period, the coroner listed "alcoholism" as the cause of death for 698 (1.29%) investigations and "motor vehicles" as the cause of death for 9,388 (17.36%). On average, abortions accounted for .5295% of deaths during this period. The highest recorded percentage of abortion deaths was .729% during the fiscal year from July 1929 through June 1930—likely a result of the onset of the Great Depression—and the lowest was .247% of all deaths during the fiscal year July 1936 through June 1937. Of the 278 abortion deaths during this decade, 146 (52.52%) were determined to be self-induced abortions, the coroner classified 30 (10.79%) as criminal abortions performed by medical professionals, and 102 (36.69%) as "other."[161] "Other" causes of abortion included: "undetermined," "spontaneous" (miscarriage), "caused by fall to floor," "criminal by known person," "criminal by unknown person," and "septic." There were also some classified as, for example, "self-induced or criminal undetermined." It is possible that some of these other classifications could have involved medical professionals as well, but even if they did, they still represented (at most) less than half of all abortion related deaths. Most of the women who died from abortions were between the ages of 20 and 45 (245 or 88.13%), the 33 remaining women (11.87%) were under 20. In 1931, the coroner began to keep track of these women's marital status. From July 1931 through June 1938,

[160] 1927 is the earliest date that the LA County Coroner's Department had a coroner's annual report for. For this table, I compiled data from 1927 through 1938 so that the fiscal year 1937, when the PCAR physicians stood trial, would be included.

[161] I made no distinction between whether a medical professional was a surgeon, chiropractor, or other type of physician. However, I cannot attest to whether the coroner made distinction in his or her record.

132 of the 166 abortion deaths in this period were married women, 23 were single, five were divorced, and six were widowed. Taken together, the average woman who died from an abortion in Los Angeles County from 1927 through 1938 was a married woman, between 20 and 45 years of age, and she self-induced her abortion.

Choosing to have an abortion reflected a woman's consideration of issues other than her lover leaving her—especially when we look and see that nearly 90% of the women who had abortions were *married*. When 36 year old Allie Mae Sullivan died from a self induced abortion in 1936, the coroner listed this married mother's probable cause for inducing abortion as "poor health, co[unty] relief, 4 children."[162] Suggesting that women self-induced abortion because of an absent lover was not only false, it was an effort to make abortion more simplistic than it actually was. Allie Mae Sullivan was probably a worried mother and wife. She could hardly afford to support her existing children, and probably did not want to worsen their lots by adding another mouth to feed. Suggesting that women only aborted when their lovers left them marginalized women's legitimate concerns about their livelihoods and their families. The myth that only single women acquired abortions because of absent lovers made it easy to think of these women as seduced victims. The narrative of jilted lovers promoted the idea of female naïveté—it did not reflect reality as much as it reflected a desire to make men central figures in abortion stories while trivializing female independent thought or, perhaps, trivialize female equality within a relationship.

This chapter has explained the way that self-induced abortion served as a chimera for women, and a beacon for doctors. For women, these means of last resort could potentially solve

[162] Los Angeles County Coroner's Register Books, Book 312, pg. 233, County of Los Angeles Medical Examiner-Coroner. Probable cause for the abortion was listed separately from cause of death, which, for Allie Mae Sullivan was listed as "endometritis from abortion of foetis with septicemia," meaning inflammation or irritation of the endometrium (lining of the uterus) caused by an infection—in this case, septicemia—a life-threatening blood infection that was actually quite common in abortion deaths.

their problem, or get them just sick *enough* to have a doctor exercise his duty as a physician and finish the procedure for them. In other cases, however, it just killed them slowly. For licensed physicians performing abortions, the extensive practice of self-induced abortions offered a convenient scapegoat in the event they botched the procedures themselves, for these respectable physicians could claim that the women attempted the procedure on first, came to them ill, miscarrying, but, unfortunately, too late.

At the same time, this chapter has provided statistics that paint a picture of the types of women who died from abortions. We know that women of all races and classes acquired abortions throughout American history. Before the professional organization of the medical field, most women went to midwives or self-induced. After the professionalization of the medical field, most native-born white women who wanted abortions went to a physician first, while most poor and non-white women sought help from midwives of the same race or ethnicity, or continued the practice of self-induced abortion because they could not afford the fees. According to Leslie Reagan, because *successful* self-induced abortions are invisible abortions to society, they continue to elude historians. We can infer that the number of at-home abortions declined with the increase of professionals, but that this practice continued to remain "concentrated in the groups with the least resources: the poor, African Americans, rural, and unmarried."[163] Even as medicine professionalized, expanded, and as abortions became safer, these advancements did not extend to women of color.

The next chapter follows the case of deceased Margaret Scott, and Dr. Mathew Marmillion—a young black woman, and the physician believed to have performed the procedure. The next chapter will illustrate the unique obstacles that blacks faced in the medical field, and in acquiring or providing abortions. In itself, it shows that the experiences black and

[163] Reagan, *When Abortion Was a Crime*, 43.

white women had in response to unwanted pregnancy were similar. In the cases of Margaret Scott, Delphine Walsh, and Vera Nelson, all three women were able to find licensed physicians to perform the procedure, and unfortunately, all three died. However, journalists did not write about Margaret Scott in the same way they wrote about Delphine Walsh or Vera Nelson. They didn't search for the man who betrayed her (because he had escorted her to the doctor), nor did they write about the nature of their relationship. The journalists did not write about Scott's background. Instead, the black newspapers that covered the incident shifted their focus to preserving and protecting the integrity of Dr. Marmillion—a prominent race man and community member. While Drs. Traxler, Lanterman, and Fiske were able to evade punishment (in varying degrees), Dr. Marmillion was sentenced to a lengthy term, and served most of it—suggesting he did not possess the same leverage in the wider (whiter) community, and perhaps even suggesting that Margaret Scott was not as much of a victim.

Chapter 3: Inconceivable Blackness

> **"**[I found in my] investigation that year that a large number of colored washerwomen, finding it hard to get the husks to feed and the rags to clothe their already large family of little ones, living in one room like stock, rather than add to their burdens, resort to crime. This is also a fruitful reason of the slow rate of increase in the colored population. This state of affairs is not confined to Nashville. It is true of nearly all our large Southern cities; and whether we like it or not, the hard fact remains that the enormous death rate among us, together with our small birth rate, is one of the signs of the times that, unless our home life be radically changed, the Negro problem in America may be ultimately solved by the extinction of the Negro."
> —H.F. Kletzing and W.H. Crogman, *Progress of a Race*, 281-282.

It was late at night when Dr. Edna Griffin called a nearby hospital to set up an emergency appendectomy for one of her patients. Over the phone, Dr. Griffin secured ward accommodations and some calm from the hospital attendant who assured her that everything would be safe and ready for her patient upon their arrival. Dr. Griffin promised her patient that everything would be fine as they headed to the hospital. Her patient, an older, poor, black woman, remained skeptical that this institution would provide her with any medical care. When they arrived at the hospital, Dr. Griffin entered first to make sure everything was ready. It was at this point that the clerk informed Dr. Griffin that they could not admit her patient. Dr. Griffin, having only recently moved to the area was not on their staff list despite having called several weeks earlier. Furthermore, this hospital only admitted blacks to private rooms. Since there were no private rooms available, they would have to leave. The clerk offered Dr. Griffin the phone and a phone book in case she wanted to call other hospitals nearby.

Each call that Dr. Griffin made resulted in a similar answer—"I'm sorry, Doctor, are you on the staff list?" "We do not take colored patients." Dr. Griffin was unable to set up the emergency appendectomy in any nearby hospital. Dejected, she returned to her car, only for her patient to greet her with an "I told you so." The doctor took her patient back home where she

contacted one of her fellow black physicians, Dr. Brandon A.T. Bowlin, for advice. The only other option, Dr. Bowlin replied, was to call for an ambulance and send the woman to the County General Hospital. Dr. Griffin was dissatisfied with that reply, as was her patient. County General was twenty miles away and her patient was in agony with an appendix that was about to burst; additionally, sending her patient to County General would mean that Dr. Griffin would not be the one performing the operation and her patient trusted no one else. Regardless, Dr. Griffin knew there was little else she could do. She called County General and arranged for the ambulance to pick up Mildred Jones. Dr. Griffin made her patient as comfortable as she could while they waited for the ambulance. When the ambulance arrived, they put her patient woman on a stretcher, wheeled her into the ambulance, and took her "on what proved to be her last journey."[164]

Los Angeles in the early twentieth century was a far cry from the racial paradise migrant blacks anticipated. While the story of Dr. Griffin's patient may not be a surprising tale if it occurred in the South, this story occurred in Pasadena and Los Angeles, California. According to Douglas Flamming, when California was admitted as a free state in 1850, only a small fraction of the population was African American.[165] While blacks in California did experience discrimination at the hands of whites, they were not immediately considered the greater threat. In fact, many of the exclusionary policies of the west targeted Native Americans and Chinese first, then blacks. However, as the population of California grew so too did the restrictive measures against blacks. As blacks left the South is mass migrations during Reconstruction, Los Angeles

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[164] Helen Kitchen Branson, *Let There Be Life: The Contemporary Account of Edna L. Griffin, M.D.*, Kessinger Publishing Reprint Edition (Pasadena: M.S. Sen, 1947), 11-18 and Herbert M. Morais, *The History of the Negro in Medicine*, The Association for the Study of Negro Life and History (New York: Publishers Company, Inc., 1967), 140-141.

[165] Douglas Flamming, *Bound for Freedom: Black Los Angeles in Jim Crow America* (Berkeley: University of California Press, 2005), 21.

became the center of the black population in California and the west, and allowed for a closely-knit leadership group to arise. By the 1920s, the black population in Los Angeles had reached 15,500 from only 100 in 1880 and continued to grow.[166]

This new migration, according to historian Scott Kurashige, brought race to the fore.[167] In order to continue to promote the migration of wealthy and middle class whites in the face of a rising black population, Los Angeles boosters utilized racially restrictive covenants to protect property values, suburbs, and subdivisions from a non-white invasion. The use of civic engineers and planners facilitated the construction of intelligently designed, "complete communities."[168] Increasingly, non-white migrants came to a Los Angeles that was already segregated and racialized. Unlike the black-white dichotomy prevalent in the North and South, the presence of other groups like Asians and Mexicans made race operate differently in the west. The blacks who left the South before the Civil Rights era had already begun their quest for civil rights. In fact, "the act of migration itself was the cornerstone of the new movement, bringing black people intent on equality to cities where that equality was conceivable."[169] As engaged in geographic mobility, they also sought opportunities for economic mobility. However, the medical field all but shut its doors to the prospects of black professional equality.

Though the late 18th and 19th centuries saw several cases of respected black physicians, these cases did not establish a precedent that made whites accept blacks in the medical field.[170]

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[166] Ibid., 25.

[167] Scott Kurashige, *The Shifting Grounds of Race: Black and Japanese Americans in the Making of Multiethnic Los Angeles* (Princeton: Princeton University Press, 2008).

[168] Greg Hise, *Magnetic Los Angeles: Planning the Twentieth-Century Metropolis* (Baltimore: The Johns Hopkins University Press, 1997), p. 25.

[169] Josh Sides, *L.A. City Limits: African American Los Angeles from the Great Depression to the Present* (Berkeley: University of California Press, 2004), 131.

[170] W. Montague Cobb, MD, PhD., *Progress and Portents for the Negro in Medicine*, (New York: The National Association for the Advancement of Colored People, 1948), 7, Box 4, Folder 4, Ephemera from the Arthur B. Spingarn Collection of Negro Literature (Collection 923), Department of Special Collections, Charles E. Young Research Library, University of California, Los Angeles.

Into the 20th century, most medical schools wouldn't admit blacks unless the black applicant explicitly stated his or her intent to practice medicine in Liberia. Many white medical students feared that the presence of black students was not only socially offensive, but would cheapen the quality of their education. As a result, most medical schools were reluctant to admit them.[171] There were so few blacks in the medical field, that by 1894, the number of medical schools that accepted women was considerably greater than the number of medical schools that accepted blacks. In preparation of a social study under the direction of Atlanta University in 1905, the conference sent a circular to the medical schools in the country asking if they had black students. While most just responded that they accepted black students or did not, some schools took the liberty of writing more colorful responses. For example, L.C.M. McElwee, dean of a medical school in St. Louis, Missouri wrote: "If you are looking for 'niggers' go to Boston or other 'nigger' loving communities… [We have] none, by God, sir! And what's more, there will never be any *here*."[172]

In order to combat the overt discrimination in admission policies, many blacks turned to predominately black colleges and universities in the United States. Initially, there were many predominately black medical institutions in the United States; but the Flexner Report of 1910 on US medical schools cut the total number of medical schools in the United States from 160 to 39. While the report did result in the closure of a number of low-grade medical schools, it also shut down—and labeled illegitimate—all black medical schools except for Howard and Meharry.[173] When Edna Griffin applied to medical schools in 1929, she looked to California first. The pull of

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[171] Wilbur H. Watson, *Against the Odds: Blacks in the Profession of Medicine in the United States*, (New Brunswick: Transaction Publishers, 1999), 50.

[172] *The Health and Physique of the Negro American: A Social Study made under the direction of Atlanta University by the Eleventh Atlanta Conference*, W.E.B. Du Bois, ed., (Atlanta: The Atlanta University Press, 1906), 98.

[173] Harriet A. Washington, et al., "Segregation, Civil Rights, and Health Disparities: The Legacy of African American Physicians and Organized Medicine, 1910-1968," *Journal of the National Medical Association*, vol. 101, no. 6, June 2009, pp. 513-527.

California's health and climate myth was so strong, Griffin herself had stated that she wanted to be able to pull a fresh orange off of her own backyard tree.[174] Griffin's first choice was the University of Southern California's medical school, but their response was "black-and-white: 'we do not admit Negroes to our medical school."[175] Not yet giving up on her California dream, Griffin also applied to the University of California, but their waiting list was too long. At the University of Illinois, Chicago—where she received her Masters Degree in mathematics—Griffin faced a quota that had already been met. As a result, she ultimately attended Meharry Medical College.

Even when a black student acquired his or her medical degree, he or she faced a continuing battle for professionalization and legitimization. Dr. Roy Peyton, a black physician from Philadelphia actually moved his whole family to Los Angeles in hopes of a better life. After facing a multitude of challenges once he arrived in California, he tried to prepare other young black students for the difficulties they, too, would face after graduation. Dr. Peyton spoke to groups of black students throughout Los Angeles and detailed the difficulties he faced when applying for medical schools, clinic work, and employment.[176]

The role of professional medical associations remained paramount. From its founding in 1870, the AMA voted to *not* enact an anti-discrimination policy which paved the way for racism to run rampant in the organization. As a result, blacks organized the National Medical Association (NMA) as an inclusive, alternative professional medical organization for black physicians. However, the NMA was small and struggled to claim legitimacy in the AMA's shadow. The AMA frequently denied membership to NMA members. The AMA's reluctance to

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[174] Edna Griffin Oral History by Robert Oliver, Pasadena Oral History Project, Pasadena, CA, 1984, Tape 2.

[175] Ibid.

[176] Thomas Roy Peyton, *Quest for Dignity: An Autobiography of a Negro Doctor* (Los Angeles: W.F. Lewis, 1950), 106.

admit blacks served to stigmatize the NMA and contributed to black physicians' marginalization. Coupled with discrimination policies in hospital employment and property purchasing and renting, it would appear that black physicians had more to lose if caught in the midst of an illegal abortion scandal. Notwithstanding these odds, there were instances in which a physician of color felt a responsibility to care for his or her community through charity cases.

At the same time that race posed a challenge to acquiring a medical education, it created different challenges for black women wanting abortions. Historically, black women's experiences with sex and reproduction remained inseparable from their race. Before Emancipation, slave women's reproduction remained a small arena in which they could exert agency. Black women would resort to abortion or other contraceptive home remedies as a means of defiance or form of economic sabotage. In the years after the Civil War and Reconstruction, gendered violence in the form of rape and assault remained a tool of racial violence. At the same time, many Americans promulgated beliefs that blacks would become extinct outside of the institution of slavery. According to historian Michele Mitchell, while black women were still more likely to have a higher birthrate than their white counterparts, "their fecundity experienced an especially sharp drop beginning with the end of Reconstruction and lasting until at least 1930."[177] There were several factors that could have contributed sharp drop in the black birth rate: migration and migratory patterns that could have separated partners, urbanization—which generally encouraged smaller families, and employment.[178] Mitchell also explains that black women's own actions—particularly the use of folk remedies, douches, abortifacients, and abstinence—coupled with social factors like poverty, physical stress, and laborious jobs could

[177] Michele Mitchell, *Righteous Propagation: African Americans and the Politics of Racial Destiny after Reconstruction* (Chapel Hill: The University of North Carolina Press, 2004), 91.
[178] Ibid.

have also manifested in a lower birth rate.[179] Certainly, the public health crisis following the war and a decline in birth rate propelled these ideas into even the most educated circles of black elites.[180]

Black women's reproduction remained at the heart of concerns about social mobility and economic progress. In her analysis of abortion in and around Chicago, Leslie Reagan found class differences in black women's abortion practices. According to her sources, more black women were willing to bear children out of wedlock, however, this tolerance for illegitimacy was "tempered by class."[181] Increased socioeconomic status among blacks meant that families and communities held their children to more unyielding standards of chastity. Therefore, it can be inferred that as education and class standing increased, so too did rates of abortion among black women.

At the turn of the century, many black reformers turned their attention towards black women's sexuality as it related to racial vitality and uplift. By the early 20th century, eugenics' popularity made abortion and sexual regulation a Janus-faced issue among the black community. According to Meg Gillette, reproductive control remained a "controversial issue" among "prominent race men… with Marcus Garvey arguing on one side that birth control would lead to race suicide, and W.E.B. Du Bois, Charles S. Johnson, and George Schuyler arguing on the other hand that birth control would help improve the economic and health conditions of blacks."[182] Others even asserted that contraceptive use in the black community was "dysgenic" since it was "practiced solely by the higher economic and social classes that were better prepared for

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[179] Ibid., 92.

[180] See Jim Downs, *Sick From Freedom: African-American Illness and Suffering During the Civil War and Reconstruction* (Oxford: Oxford University Press, 2012) and Mitchell, *Righteous Propagation*.

[181] Reagan, *When Abortion Was a Crime*, 137.

[182] Meg Gillette, *Modernism's Scarlet Letter: Plotting Abortion in American Fiction, 1900-1945*, PhD Dissertation, University of Illinois at Urbana-Champaign, 2007, 124.

parenthood."[183] Black physicians, reformers, club women, and ministers alike devoted considerable discussion to the number and quality of black children.

According to Peter C. Engelman, Margaret Sanger's Harlem Clinic utilized "a largely black advisory council that included a number of local black professionals and community leaders."[184] This clinic, which aimed to serve the needs of poor black women, testified to the fact that black women wanted to exercise reproductive control as much as white women, and contradicted "the prevalent racist assumption that… black women inherently lacked 'intelligent foresight' in matters of sex."[185] In the wrong hands, however, efforts to provide contraceptive services to blacks resulted in outsider efforts to *control* their reproduction rather than allow blacks to direct their own projects and education.[186] For example, beginning in the 1930s, "southern states created publicly funded birth control clinics to *lower* the black birth rate."[187] While these publicly funded birth control clinics may have helped some black women exercise reproductive choice, the explicit goal of lowering the black birth rate was generated from above. Similarly, Sanger's Birth Control Federation helped develop the Negro Project in 1939. Envisioned as a project to bring contraceptive information to an underserved population, the Negro project became "indifferent to the needs of the black community."[188] Nevertheless, some prominent black leaders saw this as a progressive effort.

Writing for the *Birth Control Review*, Dr. Charles H. Garvin, a black physician and graduate of Howard University Medical School, argued that if he believed birth control would

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[183] Franklin Frazier, "The Negro and Birth Control," *The Birth Control Review*, March 1933, vol. 17, no. 8, 68.

[184] Engelman, 160.

[185] Ibid.

[186] Johanna Schoen, *Choice & Coercion: Birth Control, Sterilization, and Abortion in Public Health and Welfare* (Chapel Hill: The University of North Carolina Press, 2005), 47.

[187] Jennifer Nelson, *Women of Color and the Reproductive Rights Movement* (New York: New York University Press, 2003), 4.

[188] "Birth Control or Race Control? Sanger and the Negro Project," *The Margaret Sanger Papers*. New York University. Available at https://www.nyu.edu/projects/sanger/articles/bc_or_race_control.php

decimate the black population, he would oppose to it vehemently. Instead, he believed it to be "one of the most practical factors in the eugenic control of a people."[189] W.E.B. Du Bois held a similar view. The reformers of this line of thought believed adequate access to contraceptives would not only raise the standard of living by spacing out pregnancies, it would reduce the spread of venereal diseases. Doctor Garvin suggested that it would be more in line with the tenets of "survival of the fittest" if black families were encouraged to have two or three children—spaced out at desirable intervals—than to have a high birthrate, plagued with high infant mortality rate and tired, constantly-pregnant mothers who lack the stamina to care for their families. Dr. Garvin believed that birth control would help blacks rise up, improve their conditions, and enter the professional and upper classes. Dr. Garvin argued it was the role of black physicians to enlighten their community on the benefits of birth control in order to secure "the wealth and the social felicity of the Negro group."[190]

Whether one stood for birth control or against it, it was clear that it was more than just about bearing children or not. To many blacks in America, reproduction was about oppression or liberation in the United States. While stories like "Cora Unashamed" and *Strange Fruit* suggest that abortion was only a white women's issue, that interpretation is incorrect. To blacks in the U.S., abortion could mean race suicide, racial uplift, or anything in between. For a black woman to acquire an abortion represented a specific understanding of an American ideal. It accepted or rejected a particular understanding of motherhood and the political significance associated with it. At the same time, black providers of illegal abortions had to contend with whether they could reconcile their own beliefs with the realities of illegal abortion while taking into account the higher stakes at play.

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[189] Charles H. Garvin, M.D., "The Negro Doctor's Task," *Birth Control Review*, vol. 16, no. 9, November 1932, 269.

[190] Ibid., 270.

Dr. Edgar Bass Keemer Jr., a graduate of Meharry Medical College moved to Detroit after practicing in Indiana for some time. Dr. Keemer became a well-connected abortion specialist—the specialist to whom many other black physicians referred their patients. Initially he refused to perform abortions, but changed his stance when an unmarried woman committed suicide after he refused to perform an abortion on her. Dr. Keemer's wife was also a physician; and she wanted to help this woman with her abortion because she had had an abortion while she and her husband were in medical school. The tragedy following his initial refusal propelled him into his almost-forty-year-long career as an abortionist. Dr. Keemer was unique in his sense of personal responsibility to his patients. His fees were minimal, and if the procedure failed, he refunded the patient. When a patient needed further care he could not provide, he paid the fees to have her cared for at a hospital, and even paid the woman if she had to miss work. According to Reagan, this sense of responsibility is likely what spared Dr. Keemer from receiving complaints or having much legal interference—something he, as a black physician, would especially not have wanted.[191] Furthermore, it demonstrated the black physicians had to step outside of the traditional bounds of professionalism in order to stay in business. While Dr. Keemer was able to have a long, successful career as an abortion provider, others were not.

Mathew J. Marmillion was born in 1871 in New Orleans, Louisiana. He grew up in a well-to-do family. His father was literate and had a trade. Marmillion graduated from New Orleans University and studied medicine at Flint-Goodridge Medical School. The medical school—which began as a small institution and training school for black nurses—had its share of financial struggles in its short history and closed its doors in 1910.[192] Dr. Marmillion received his medical degree and moved to Lake Charles, Louisiana where he owned and operated the

[191] Reagan, *When Abortion Was a Crime*, 156-158.
[192] Flint-Goodridge medical school shut its doors as a result of the Flexner Report of 1910.

Marmillion Sanatorium for Women until he moved to Los Angeles in 1923. By the time that Dr. Marmillion moved to Los Angeles, he was moving to a city that was "half-free." According to historian Douglas Flamming, while the west offered blacks the opportunity to live a comfortable life, but the color of their skin limited "what they could do and be."[193] New migrants to Los Angeles brought their prejudices with them while the Klan in Los Angeles emerged reinvigorated.[194] By 1926, Dr. Marmillion "established his medical practice in the Marmillion Building, an edifice he had constructed using primarily African American labor" and "costing over $30,000" to build.[195] Dr. Marmillion had found a suitable location for his business in the segregated, yet thriving, Central Avenue district as the hub of black life in L.A. moved further south.[196] While Dr. Marmillion was establishing himself in Central Avenue at an exciting time for professional and middle-class blacks, their successes would be short-lived.

The 1930s proved to be difficult for Los Angeles' black community as the Depression sunk its teeth in the city. Black unemployment rose significantly.[197] Blacks' tenuous position in half-free Los Angeles meant that most of them lacked the resources to ride the wave of the Depression. Race prejudice meant they lacked job security, and the lack of revenue impacted professional blacks' businesses as well. In response to the economic crisis, Charlotta Bass, of the *California Eagle* organized a campaign to promote black employment. The campaign—which urged blacks to only spend their money at places where they could work—sought to reinvigorate

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[193] Flamming, 192.

[194] Ibid., 200-225.

[195] Marques Vestal, "Mathew J. Marmillion Bio," draft of document used in research for Dr. Marmillion's entry in UCLA's The Black Prisoners Project online database. Available at: blackprisonersproject.omeka.net.

[196] According to the 1932 Los Angeles City Directory, his address was 3315 S. Central Avenue. About 7 blocks north of where the Somerville Hotel (Later Dunbar Hotel) would become the "vibrant center of black life" in Los Angeles. Flamming, 262.

[197] According to Douglas Flamming, "at the outset of 1930, unemployment among black men was 8 percent; a year later it was 30 percent, and among women nearly 40 percent. By the time Herbert Hoover left the White House in 1933, nearly half of black L.A. was out of work. Employers went bankrupt or cut back; private households eliminated maids, yard men, and chauffeurs… Some companies fired black employees in order to hire unemployed whites." See Flamming, 296.

the black economy by boycotting white business and patronizing black ones instead.[198] These community-based actions to revitalize Central Avenue's economy, black citizens, and business owners also galvanized and united the community. As a result of their deteriorating position within the rest of the city, black citizens turned inward and cared for their own. This would become evident with Dr. Marmillion's arrest.

In February 1933, Los Angeles Police Detective Lieutenants Filkas and Baggot served an arrest warrant against black physician Dr. Mathew J. Marmillion. They charged the respected physician with the murder of Margaret Scott following an illegal operation. Eighteen-year-old Margaret Scott, a young black girl died of shock on the operating table after her 27-year-old boyfriend, Archie Hairston, medical student at the College of Medical Evangelism in Loma Linda, California, hired Dr. Marmillion to treat her for her condition.[199] She was approximately three months pregnant at the time of her procedure. Hairston, Scott, and Marmillion were black Adventists. There could have been many reasons that the couple would have wanted to terminate the pregnancy—their religion, Hairston's schooling and career, and class-fueled concerns about sexual propriety. Because of the scandal, the medical school expelled Hairston. He experienced a major blow to his career, and stood to serve time in prison. However, Hairston agreed to testify for the prosecution for immunity. One version of the events suggested that Margaret Scott went to Dr. Marmillion for a tonsillectomy. When she died on the table, it was discovered that she had hemorrhaged from an attempted abortion. Another version suggested that Margaret Scott sought an abortion, but when it failed, Dr. Marmillion attempted to cover it up with a tonsillectomy.

Dr. Marmillion initially refused to speak on the matter of his arrest, but when he realized his professionalism was in question, he stated that she had come to him "in a serious condition:

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[198] "Don't Spend Your Money Where You Cannot Work," Flamming, 300.

[199] There are a few different spelling variations for Archie's last name, including: Harrison, Hairston, and Harriston.

that an operation had already been attempted and that his efforts were to save the girl's life."[200] Dr. Marmillion claimed Ms. Scott suffered a "delayed shock due to that operation of which I knew nothing at the time… [If I had known], I would have sent her to the hospital. I would not have touched her."[201] It is possible that the crippled economy of the Depression compelled Dr. Marmillion to perform the illicit procedure. Similarly, it is possible that the ethos of supporting black businesses compelled Margaret Scott and her boyfriend to make the 60 mile trip from their small town to Los Angeles—a big city—where they could find a black physician to perform the procedure. Dr. Marmillion's defense suggested that Hairston, the young medical student, performed the initial operation before bringing Ms. Scott to Dr. Marmillion—though Hairston vehemently denied those accusations and claimed that Dr. Marmillion *alone* botched the procedure.[202] Unlike coverage in the *Los Angeles Times* for the Walsh and Nelson cases, the *Los Angeles Sentinel* and *California Eagle*, both newspapers with primarily black readership, did not write about Margaret Scott's life or background. They did not portray her as a young, naïve girl, they did not write about her life or the details of her family. Humanizing Margaret Scott could have sabotaged the community's ability to save Dr. Marmillion—a respected black professional in the segregated and protective Central Avenue community.

In June, a jury of six white men and six white women found the 62-year-old physician guilty of second-degree-murder and sentenced him to five years to life. Dr. Marmillion changed attorneys and filed an appeal while the black Los Angeles community and the *Los Angeles Sentinel* rallied behind him. He was hospitalized for his deteriorating health, which compelled others to ask that he be allowed to return home, but to no avail. The court denied his appeal

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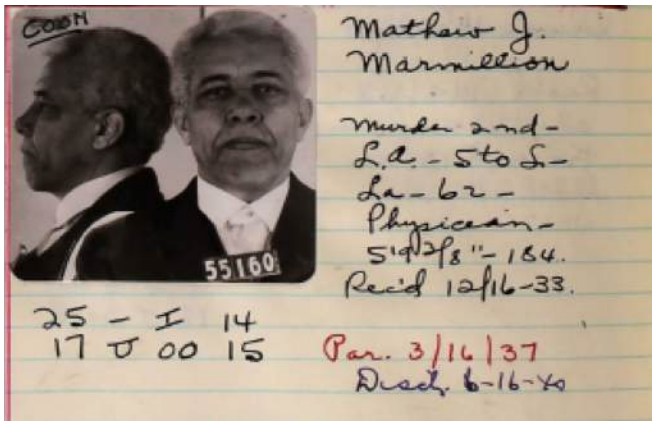
[200] "Free Dr. Marmillion!" *Los Angeles Sentinel*, Sept. 20, 1934, 1.

[201] "Marmillion Trial Opens," *California Eagle*, June 16, 1933, vol. 46, no. 4, 1.

[202] David T. Beito and Linda Royster Beito, *Black Maverick: T. R. M. Howard's Fight for Civil Rights and Economic Power* (Champaign: University of Illinois Press, 2009), 24.

stating: "the woman died while lying upon an operating table in the office of the defendant… There is an abundance of evidence of circumstances connecting [the] defendant with the commission of the offense. We are unable to discover so much as an excuse for this appeal."[203]

While serving time in San Quentin, Dr. Marmillion received the support of 20,000 petitioners to the governor demanding his release. They emphasized his accomplishments and his character—describing him as a charitable churchman of integrity. The petitioners believed Dr. Marmillion to be a reputable, honest man and trusted his account of the incident. Citing his good character, *The Sentinel* urged the governor to give Dr. Marmillion back to his community if only for him to spend "the sunset of his well-spent life" at home.[204] In the spring of 1937, Dr. Marmillion was paroled to the care of Dr. E. A. Mitchell. Efforts continued into 1939 to secure a formal pardon. He was fully and officially discharged in 1940. Dr. Marmillion died on March 17, 1950 in his home in Los Angeles after a yearlong bout of illness.



Mathew J. Marmillion, no. 55160, San Quentin Prison Registers, California State Archives, Office of the Secretary of State, Sacramento, California.

When a black *physician* was accused of performing a criminal operation, the local black community tended to rally to his or her aid. In Washington State, for example, when Dr. J. H. Tompkins was arrested for the murder of Miss Jean Maxwell after an alleged abortion, the $8,000 bail was acquired through security "furnished

[203] *The People, Respondent, v. Mathew J. Marmillion, Appellant*, Crim. No. 2435, Court of Appeal of California, Second Appellate District, Division One, 135 Cal. App. 560; 27 P.2d 649; 1933 Cal. App., December 4, 1933, Decided.

[204] Free Dr. Marmillion!

by colored citizens."[205] Bail and sentences were also higher for those black physicians implicated in performing illegal abortions. When, Dr. J. J. Hood of North Carolina, was accused and arrested for performing an illegal operation that resulted in the death of a young white woman, he was not able to come up with the $11,000 bond and was remanded to jail.[206]

Black physicians did not have the same political or social influence as their white counterparts—regardless of their education or class. For example, Dr. William W. Gibbs, a black physician in Baltimore became a pawn in a struggle between members of a white family for which he was a physician. When the eldest daughter of the family believed his assistant was having an affair with her father, she accused the physician and his assistant of performing an illegal operation upon her younger sister. The younger sister and the physician both vehemently denied the accusations.[207] The idea that blacks—or whites who closely associated with blacks—maintained inappropriate sexual relations was worse than an accusation of illegal abortions. Knowing this, Dr. William T. Peyton of Louisville, Kentucky chose to take his life with a gunshot wound to the head rather than face his charges of performing a criminal operation on a white woman (who lived).

A physician's own race also influenced the patients he or she received. Unable to work in white institutions, nonwhite physicians often catered to other nonwhites who were also unable to access white institutions. Margaret Scott and her boyfriend traveled from the outskirts of San Bernardino County to the major city of Los Angeles in order to find a physician they knew wouldn't turn them down. Dr. Edna Griffin frequently tended to house calls throughout Los Angeles County because the color of her patients' skin meant they had limited options in their

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[205] "Bail for Negro Physician," *The Washington Post*, Jul. 4, 1905, 4.
[206] "Charges Mount Against Aged Negro Doctor," *Philadelphia Tribune*, Jul. 9, 1931, 2.
[207] "Charged with Operating on White Girl," *Afro-American*, October 10, 1931, 1.

own cities. As a result, physicians of color had a difficult situation—their resources and energies were spread out thinly over a large geographic area.

There were multiple instances in her career when Dr. Griffin pondered if some of her patients would have fared better in the hands of a white doctor. The incongruity between black and white experiences in the medical field often frustrated black medical professionals. After the passing of Mildred Jones, Dr. Edna Griffin expressed these concerns and wondered if she had chosen the right profession. Upset by the institutional hurdles that prevented her from treating her patient, she stated: "have I the right to gamble a human life when somebody else…by advantage of his complexion can give my patients everything science provides?"[208] She became particularly self-conscious of her position as a black female doctor after she heard that the family member of one of her OB patients who delivered a stillborn said "that's just the trouble with a woman doctor—and especially a colored woman doctor. They just don't know nothing."[209]

This chapter has shown the unique experiences that blacks faced when acquiring and providing abortions. Moreover, this chapter situates the topic of abortion within a wider discussion of the black community in Los Angeles, and the black professional medical community nationally. The other chapters have already detailed how the AMA spearheaded the campaign against abortion, how abortionists were considered disreputable, and how *white* regular physicians were able to either 1) negotiate lenient sentences or rejoin the professional medical community soon after an abortion charge or 2) claim, based on their status as regular physicians, that they had performed their legitimate duties as a physician. However, what about black physicians? Using Dr. Edna Griffin, who as far as I know was *not* an abortionist, I have illustrated the difficulty that black, regular physicians had in establishing themselves in the

[208] Branson, 19.
[209] Ibid., 62.

medical field. My examples with Dr. Griffin frame the black physician experience in Los Angeles. With few exceptions, these regular physicians struggled to manifest their claim to legitimacy, and were unable to access resources and influence outside of their own community. With that in mind, it makes sense to assert that the experiences for black abortion providers were far more dismal.

In the next chapter, we will explore the experiences of female providers of illegal abortions. Like their black counterparts, these women faced unique obstacles in this line of work. The AMA's antiabortion campaign and the creation of Obstetric and Gynecological specialties functioned to establish male authority over women and midwives. Medical men, obstetricians, and gynecologists deliberately sought to legitimize their specialties in order to pull their practice from the grips of women and midwives. Some male obstetricians even went so far as to say "midwife" and "abortionist" were "synonymous terms."[210] As a result, female providers of illegal abortions were doubly degenerate to the organized medical field. They not only helped women shirk the responsibilities of motherhood, but they were also subverting the medical profession and society.

[210] "Thousands of Babies Slain in Year, is Charge," *Chicago Daily Tribune*, December 7, 1918, 5.

Chapter 4: Doubly Degenerate: Women Abortionists, Independence, and Laura Miner

> Mr. Leavy: "There are mills operating in our City of Los Angeles, for instance where the price runs very high. These people may have had medical training but I don't know if you could call them doctors. I think most abortions fall into that category."
> Pamela Thompson: "In between."
> Mr. Leavy: "Somewhere between—do-it-yourself, the primitive method and the guy who has had some medical training."
> Chairman O'Connel: "The mid-wife."
> Mr. Leavy: "The mid-wife type of thing, yes."
> —Testimony from AB 2614 Abortion Hearing, San Diego, California, December 17-18, 1962.

In a forum at the meeting of the Maternity and Child Welfare Group, Drs. Violet Russell and Joan Malleson advocated the need for more lenient abortion laws. Understanding the dangers women would face if they needed to seek illegal abortions, Drs. Russell and Malleson advocated the expansion of legal abortion rights in order to promote and protect the safety of women. As women, Dr. Russell and Dr. Malleson's advocating of more lenient abortion laws was unique and would have been unheard of in the late 19th century. According to Leslie Reagan, most women physicians took the conservative anti-abortion stance because hostile attitudes towards midwives forced female physicians to differentiate themselves *from* midwives. Consequently, many female physicians spearheaded anti-abortion/anti-midwife campaigns in order to not appear soft or magnanimous towards the procedure or the presumed practitioner. Therefore, Dr. Russell and Dr. Malleson's outspokenness *for* abortion in the 1930s suggests that female physicians had already established themselves as medical professionals.

Until the mid-nineteenth century, pregnancy and childbirth remained women-and-midwife-centric life events. Midwives and family helped with the delivery that took place in the home. Nineteenth-century physicians in the AMA worked tirelessly to establish the medical field as a legitimate entity. They sought to preserve the field's reputation by censuring "quacks" and

practitioners of "irregular" medicine. While the publicized rationale of these campaigns may have been to protect the public and the profession profession by removing from it all those who should not partake in the healing art, the reality was that the vast majority of the "quacks" and "irregulars" were women and/or people of color. Regular physicians used these campaigns to position themselves as the ethical vanguards of society—the "guardians of the unborn generations, and . . . educators of public opinion along those lines."[211]

Moral language may have also been applied as part of an effort to mitigate the effects many believe abortion had on traditional gender norms—especially for white women who were choosing to delay or bypass childbirth altogether in search of other educational or political pursuits.[212] Indeed, it suggests that women's choices did not go unnoticed. However, racial specificity of the antiabortion rhetoric—which targeted the same white women with whom private physicians sought to maintain business—meant that physicians could not call these women depraved. Rather, physicians emphasized *their own* medical education and increased understanding of the development of fetal life.[213] The American Medical Association's House of Delegates proposed creating a short tract for women "designed to *enlighten* them upon the criminality and physical evil of forced abortion."[214] In making abortion an issue about *education*—or lack thereof—physicians simultaneously confirmed their own enlightened status while avoiding the potential of alienating their patients.[215]

Some historians have argued that the medical profession's efforts seemed to be "a covert battle against women," as new specialties in gynecology and obstetrics—coupled with social

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[211] Drake, 133.

[212] Gail Bederman, *Manliness & Civilization: A Cultural History of Gender and Race in the United States, 1880-1917* (Chicago: The University of Chicago Press, 1995).

[213] Beisel and Kay, 507.

[214] *Digest of American Medical Association Official Actions*, Official Proceedings of the house of Delegates, June 1864:50, 60. Emphasis mine.

[215] Beisel and Kay, 507.

ideas like "domestic spheres"—exaggerated "the centrality of the womb to women's health."[216] For example, in response to beliefs that over-civilization drained whites of their potency and energy, physicians "discovered" a disease of the highly-evolved they called "neurasthenia": a disease caused by "excessive brain work and nervous strain.[217] According to this discourse, neurasthenia in men led to weakness and effeminacy; in women, it produced hysteria and other disorders of the womb. Some physicians claimed that women's desires to remain unmarried or childless were unnatural—that higher education and women's organizations invariably led to "the onset of 'those grievous maladies which torture a woman's earthly existence . . . amenorrhoea, dysmenorrhoea, chronic and acute ovaritis, prolapsus uteri, hysteria…and the like' [furthermore] contraceptive use could induce cancer, sterility, insanity, or 'deranged' bladders and rectums."[218] In making the womb central to women's health and national vigor, physicians reaffirmed traditional gender roles.

Many physicians from the late nineteenth century continuing through the twentieth century, conflated birth control and feminism with national decline, as well as physical and moral degeneration.[219] Some claimed that sex without chance of pregnancy was "onanism," while others suggested that women who used birth control measures and devices were prostitutes.[220] According to Victorian beliefs, prostitutes were the women who knew of effective methods of birth control as a means of professional success. At the same time, chastity until marriage and motherhood were essential to solidifying proper women's position and relevance in society.[221] As a result, birth control became associated with immorality because of its connection to

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[216] John D'Emilio and Estelle B. Freedman, ed., *Intimate Matters: A History of Sexuality in America* (New York: Harper & Row, 1988), 146.

[217] Bederman, 14.

[218] Tone, 18.

[219] Bederman, and Gordon, *The Moral Property of Women*.

[220] According to this biblical story, Onan was supposed to impregnate his sister-in-law after his brother could not. Instead, Onan "spilled his seed" and invoked God's wrath.

[221] Gordon, *Woman's Body, Woman's* 102-115.

prostitution and evading maternal destiny. Figures in the women's rights movement, like Elizabeth Cady Stanton and Susan B. Anthony, understood the ideological power that motherhood possessed. They, too, believed that abortion and infanticide were morally depraved. However, they named marital rape (which was not a crime), women's inability to secure divorces, and their second-class status as the causes for women's desperation to secure abortions.[222] Unless women had the power to deny their husbands' sexual advances, they would continue to have abortions. If women were free of their husbands' degradation and granted political rights and power, they believed fewer would seek abortions.

In her 1908 manual to young women, Emma Angell Drake, M.D., lamented that young women came to the altar of matrimony "better informed in the methods of preventing conception" than prepared for motherhood. She claimed that when a woman entered into a marriage with plans *other* than being "the joyful mother of children," she committed "a grievous sin."[223] Dr. Drake's female perspective illustrates a couple of things: First, because she was a female physician, her manual to young women read as an authentic, gendered primer to prepare women for fulfillment of accepted gendered ideologies of femininity. Secondly, Dr. Drake's manual does not counter Storer's argument that medical *men* were the guardians of women and

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[222] Marital rape was not a crime in the United States until well into the 20th century. Under the doctrine of "coverture" (or "marital privilege"), it was impossible for a husband to rape his wife since she essentially became his property once they got married. Efforts to make marital rape a criminal act equivalent to *non-marital* rape began in the late 19th century, but did not result in any tangible action. Many still view marital rape as somehow different from non-marital rape. For example, the 1962 Model Penal Code—a joint scholarly effort developed by the American Law Institute that attempted to standardize American law—provided its interpretation of the felony rape in the first, second, and third degree. All three descriptions included the clause "not his wife." Specifically, "when a male 'has sexual intercourse with a female not his wife…'" A handful of states still make exceptions for rape cases involving married couples, and several more treat marital rape as a lesser crime than non-marital rape. Just recently (in June 2015), Donald Trump's lawyers made a comment about marital rape not being a real crime. While it inspired outrage, if we look at how the law is handled, and how (in)frequently this specific crime is prosecuted, his statement may as well be true. For more on marital rape, see Jill Elaine Hasday, "Contest and Consent: A Legal History of Marital Rape," *California Law Review*, vol. 88, no. 5 (October 2000), 1373-1505. For more on the 1962 Model Penal Code as it relates to rape, see Deborah W. Denno, "Why the Model Penal Code's Sexual Offense Provisions Should be Pulled and Replaced," *Ohio State Journal of Criminal Law*, vol 1, no. 207 (2003), 207-218.

[223] Drake, 126.

children; instead, it fit within professional medicine's mainline agenda because most female physicians felt additional pressure to distance themselves from midwives and irregulars and adopt a more conservative view.[224]

Part of the efforts to legitimate gynecology and obstetrics as specialties relied upon the notion that the nature of childbirth required medical intervention. Childbirth was no longer a "normal function" to be left to ignorant midwives.[225] As physicians gradually took the place of midwives and moved their work into medical offices, they delineated a clear line between "regular" and "irregular" medicine and "legitimate" and "illegitimate" practitioners.[226]Abortion was a practical platform upon which to build the foundation of medical professionalism because "irregulars" and midwives were assumed to be the ones who performed them. By arguing vehemently against abortion procedures—and the people who performed them—physicians presented themselves as legitimate practitioners of medicine and guardians of health and *life*. Efforts to eliminate the notion of "quickening" were part of a larger movement to establish physicians' modernity and the scientific authority of medical professionals over that of people of color, women, midwives, tradition, and superstition.[227]

It was common for the personification of an abortionist to be female. In his treatise *Criminal Abortion*, Horatio Storer suggested that women were the chief perpetrators in the crime. He not only condemned the women who submitted to abortions, he condemned their "female *friend*…who has herself undergone…the crime."[228] Storer also blamed nurses, midwives, and female physicians. Before organized medicine, midwives typically performed the

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[224] Reagan, *When Abortion Was a Crime*, 93-95.
[225] "Thousands of Babies Slain in Year, is Charge," *Chicago Daily Tribune*, December 7, 1918, 5.
[226] Reagan, *When Abortion was a Crime*.
[227] Jennifer Lisa Koslow, *Cultivating Health: Los Angeles Women and Public Health Reform* (New Brunswick: Rutgers University Press, 2009), 117-120.
[228] Storer, *On Criminal Abortion in America* (Philadelphia: J.B. Lippincott & Co., 1860), 55.

procedure. A woman who wanted an abortion would have likely felt more comfortable with another woman. Though Storer claimed he did not hope to incite "prejudice against female physicians and midwives," he simply lamented how they were "peculiarly and unfortunately situated" to commit the crime.[229]

Storer was not entirely off base. Female networks created a system where women more often knew about other women who performed or received the desired procedure. Leslie Reagan challenged Kristin Luker's "century of silence" argument by stating that women were not silent, but, rather, spoke in secret about their abortion through these female networks. They used these networks to find abortionists for their friends, sisters, cousins, and themselves. Though there were likely as many men who performed abortions, the image of a woman abortionist was especially inflammatory. Since the abortion cases that came to the public's attention involved death, female abortionists represented aberrations of idealized femininity. They were violent criminals. Women abortionists were subversive on multiple levels—violating sexual norms, patriarchy, and the law. They also facilitated other women's falls from grace, and helped other women violate appropriate gender roles as they eschewed motherhood. As such, female abortionists were not only threats to women's safety, they were threats to community and society writ large. They were the antithesis of respectable *mothers* who had come to represent guardians of the home and the domestic sphere.

Many women specialized in the procedure. In the late 19th and early 20th century, figures like Dr. Lucy Hagenow of Chicago and Madame Restell of New York became the faces of illegal abortionists in major U.S. cities. After Dr. Lucy Hagenow's arrest and arraignment for the illegal operation upon Mrs. Fred Albrecht, the confessed abortionist told the authorities that

[229] Storer, *On Criminal Abortion*, 56.

business had been "booming."[230] But business wasn't just booming for herself. According to Dr. Hagenow, business was booming for a whole host of abortionists whose grafts, conspiracies, and alliances with hushed officials allowed them to thrive. She claimed there were some abortionists operating in Chicago who had perfected their methods to the point that it would be nearly impossible to catch them. On the other hand, she also painted a picture of greedy villains and disreputable practitioners when she accused one midwife of allowing her patient to die of blood poisoning when she realized the patient only intended to pay $2.50 for the procedure.[231] In New York, Madame Restell (Ann Lohmann) had amassed a large fortune from 1836 through her suicide in 1878. She began her career in contraceptives after marrying a quack doctor who branded female contraceptive aids with her alias—Madame Restell—and began to perform abortions after his death. When Anthony Comstock entrapped her after a series of brushes with the law beginning in 1841, she committed suicide rather than face trial. Her estate was estimated at nearly $1,000,000 at the time of her death.[232]

Like their black counterparts, female abortionists held little social or political clout in the event of an indictment. For example, Dr. Raye Everett was promptly indicted on charges of malpractice and performing an illegal operation when 19-year-old Mrs. Evart Buchanan died of peritonitis. The swift indictment was likely a result of Mrs. Buchanan's father's prominence in the area. Frank Woodruff, Mrs. Buchanan's father, claimed that Dr. Everett must have coerced his daughter into having the operations for she would have never consented to it on her own. Because of the particularly negative view that the public held of women abortionists, they had little recourse when caught. When police arrived at the home of Mrs. Margaret Sloman and

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[230] "72 Women Die in 1921, Death Toll of Abortionists," *Chicago Daily Tribune*, January 13, 1922, 17.
[231] "'Hush' Officials Permit Abortion Ring to Grow," *Chicago Daily Tribune*, June 1, 1915, 6.
[232] Assumption University, U.S. Women's History Workshop, "Ann Trow Lohmann," http://www1.assumption.edu/WHW/done/webquest/lohman.html

asked her to come with them to the station to speak about the abortion they believed she performed on Mrs. Frances Healy, she attempted suicide by ingesting four tablets of bichloride of mercury before agreeing to go with them. She received medical attention before becoming too ill.[233] Similarly, 68-year-old Emma Schulz attempted suicide when she was faced with arrest following the death of Mrs. Gladys Schaeffer following an illegal operation.[234] While it was generally difficult to bring abortionists to trial without the abortions ending in a fatality, it was typically easier to bring about a charge against a female abortionist.

In 1929, the California Board of Medical Examiners revoked Maria Caron's license to practice midwifery after her patient Gertrude Heiser died in Los Angeles' Methodist Hospital. While the BME had been aware of Caron's practices, Gertrude Heiser's death was the impetus that allowed the Board to charge the "notorious abortionist."[235] Providers of illegal abortions were savvy and prepared. When Inez Brown, a San Francisco abortionist opened her own clinic (a year after working at another physician's abortion clinic), she installed trap doors, secret compartments, and furnaces so that she could hide or destroy evidence in her centralized office. Others consistently moved around in order to avoid getting caught. From 1924 through 1934, Anna Limbeck travelled to and from medical offices performing abortions. The BME knew what she was doing, but they did not have enough evidence to convict her. In 1932, she was held to answer to the California Superior Court on a murder charge resulting from an illegal abortion. When police arrested her in 1934, it was reported that Ms. Limbeck "packed her little valise, and

[233] "Takes Poison as Police Wait," *The Sun*, May 27, 1915, 14.
[234] "Woman Accused in Girl's Death Tries Suicide," *Chicago Daily Tribune*, February 18, 1929, 13.
[235] Letter from Albert Carter to Dr. Charles B. Pinkham, dated June 29, 1928, Dept. of Consumer Affairs-Board of Medical Examiners (BME), F3760:817, California State Archives, Office of the Secretary of State, Sacramento, California (hereafter CSA).

stated that she might as well make herself comfortable in jail," though she was released on bond after just a few hours.[236]

The police also made an effort to arrest the points of contact between abortionists and their potential consumers. In Northern California, Marjorie Krebs came under the watch of the Board of Medical Examiners when they realized she had been working as a steerer for Inez Brown. Ms. Krebs would call local drugstores and let them know that if they had any patrons who needed a particular kind of service (specifically an abortion) there were places nearby that could take care of it. The drugstores would spread the word, or would relay the information if asked, and any lady needing assistance would be referred to Ms. Brown. For $50, Brown would perform an abortion on any lady under 6 weeks. If the patient was three months pregnant, the fee was $100. At the height of Brown's career, she was performing up to 30 abortions a day and earning approximately $50,000 per month.

Ms. Krebs, a mother of two, claimed her husband was not helping her, so she asked Ms. Brown for a job. When interrogators pressed Ms. Krebs and warned her that she could be charged as an accessory if a patient died, Ms. Krebs stated very confidently that she wasn't worried about that because there was not a "better operator in the state than [Ms. Brown]." Krebs stated that Ms. Brown had "all the facilities to take care of anything that arises and if a patient comes there and might be a chance of anything developing, she doesn't take any chances."[237] At the end of her interview the interrogator remarked that Krebs was too intelligent of a woman to be mixed up in a thing like this. Her terse response "well, it might seem such," illustrated her frustration, and perhaps a hint of sarcasm. Ms. Krebs, who had had several abortions of her own seemed defiant at the interrogation. It is likely that she despised the law and the pompous police

[236] Letter from Special Agent Albert Carter to Dr. Pinkham, May 11, 1934 and Letter from Assistant Special Agent Wm. A. Byrne to Mrs. Mabel C. Grear, Women's Probation Officer, Los Angeles, BME, F3760:817.

[237] Statement of Marjorie Krebs, BME, F3760:817.

officer interrogating her because she knew that the services she was helping these women acquire were important to these women.

In San Francisco, the arrest of Jane Wright and the possibility of a probation deal for her section 274 violation caused Dr. Charles B. Pinkham, secretary-treasurer of the California BME, to write George McNulty, the Chief Adult Probation Officer. In his letter, Pinkham outlined Ms. Wright's long, notorious career as an abortionist over the course of at least two decades. Ms. Jane Wright—who utilized numerous aliases during her career—first came to the attention of the Board around 1910 for "misuse of the mail."[238,239] Her first charge of operating an alleged abortion business was in 1913. From 1913 through 1938, Ms. Wright had

This image, which grotesquely depicts a female abortionist is entitled: the monster of all monsters. In depicting a pregnant woman in front of this unattractive, and presumably evil, abortionist, the artist hints at what is going to happen with the aborted fetuses in the background. Charles Leandre, "Le Monstre des monstres," *L'Assiette au beurre*, 1902.

[238] Known aliases: Ann Brown, Jane Emerson, Mrs. Warren Emerson, Mrs. Warren Emmerson, Mrs. Harte, Mrs. Byron Kingston, Mrs. Jane Lewis, Mrs. Earl Peabody, Mrs. Samuels, Mrs. Emerson Warren, Frances White, and Mae White; Letter from A. Carter to C.B. Pinkham, BME.

[239] The phrase "misuse of the mail" likely refers to a violation of the Comstock Law. Around the same time as this letter was written, BME Special Agent W. N. Anderson wrote a letter about an ad that read: "One French Woman tells another when troubled with delay… In Europe, women are not distressed about abnormally delayed periods. They use Dr. Haller's famous prescription. No longer need modern women be satisfied with old-fashioned pills or gelatin capsules that act like a laxative." According to Special Agent Anderson, notices or ads regarding the producing or facilitating of miscarriage or abortion, or even for the prevention of conception, constituted a felony practice and were subject to punishment as provided in the penal code. Letter from W.N. Anderson, Special Agent to the editor of the Evening Herald and Express, BME, F3760:817.

repeated encounters with San Francisco police—including multiple raids and court appearances. Ironically, she stayed at the same address, 1304 Fillmore, the entire time. Only changing her name. She was acquitted every time, except for the last. She had to spend a year in County Jail, faced two years of probation after her release, and was forced to move from her previous address.[240] While abortions remained a difficult crime to prosecute, it would appear that female abortionists faced more harassment than their male counterparts.

Despite the repeated harassment, women continued to provide illegal abortions. It is possible that some female abortionists possessed an intimate understanding of the fear of pregnancy and motherhood. Some may have undergone their own illegal abortions. This may have compelled them to help other women by performing abortions. In a society that explicitly stated woman abortionists were "not fit for decent society," and that it was "the duty of any healthy married woman to bear children," these female abortionists were rebels to the established order.[241] These were the women that the antiabortion campaigns caricatured. The women of this chapter were exceptional in the sense that they operated their own businesses and performed the procedures themselves. Frequently, women in abortion clinics served in auxiliary roles—as nurses, staff, and steerers. However, in San Diego, Laura Miner made a name for herself as one of the most skilled and proficient abortionists in the industry. She began her career as an abortion provider independently, but soon joined an empire that took over the Pacific Coast.

Laura Kershaw was born in 1898. She did not have a particularly happy childhood. In fact, her mother nearly died from a back alley abortion. When Laura was nine, her mother died exhausted, having eight children within a span of 12 years. Laura went through orphan asylums, foster homes, and stepmothers before reaching adulthood. Laura married Glen Miner in Chicago

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[240] Letter from George McNulty to Board of Medical Examiners, June 18, 1938, BME, F3760:817.
[241] "Court Denies Divorce to Woman Aborter," *Chicago Daily Tribune*, June 1, 1915, 5.

on October 18, 1924. Shortly thereafter, Glen and their two children Donald and newborn Lorraine, became ill with different conditions—Donald with infantile paralysis and Lorraine with Tuberculosis that she caught from her father. Unfortunately, both infants died. Glen had not made a full recovery and his physician urged him to seek treatment at a government hospital in Prescott, Arizona. Initially, he did not want to go, but when Laura became pregnant again, he decided to seek treatment to cure himself before their daughter Joyce was born. When Joyce was six months old, Laura also moved to Arizona. They lived separately since Glen but had to stay at the hospital for treatment, but he visited Laura and Joyce periodically. While Glen was in the hospital, Laura lived on a tight budget. In the three years they were in Arizona, Laura got pregnant twice. Due to his condition, Glen did not think it was an appropriate time for them to have more children, so he convinced Laura to have an abortion both times. Glen performed the abortions on Laura. He had been a pre-med student and worked as an assistant to an abortionist from 1920-1921.

In late 1931, Laura became pregnant again and convinced Glen to let her keep the baby. Their son Jerry was born in May 1932. Glen left the hospital in late November or early December in 1932. He believed he was well enough and would not infect the baby. Initially, everything seemed fine, but after a few weeks, Jerry started losing weight, and they discovered he had Tuberculosis. The doctor told Laura she needed to move her children to another state. By March 1933, Glen agreed. Laura borrowed some money from family in Chicago and she took her children and what few belongings she could to San Diego, California. Jerry recovered in San Diego. Glen returned to the hospital in Arizona for treatment. He recovered and got a job in the Governor's office while Laura struggled with their two children in San Diego.

In order to support her family, Laura started a bridge club. She would offer private and group lessons in contract bridge so that she could stay home with her children. In the middle of 1934, one of Laura's bridge students told her she was pregnant and begged for advice. Laura explained that she had some experience. She had the instruments Glen used for her abortions, but even if she could start the procedure, she might need a doctor to finish it. Laura found a doctor who said he would help after her student had begun to bleed and miscarry. Laura started the procedure, and he finished it. Everything went smoothly, and soon enough, Laura began to work for a doctor who performed abortions exclusively. Laura did not choose the abortion industry first. She came into it as a part of a female network wherein women trusted each other for advice.

Laura Miner's first home in San Diego, CA. Courtesy of Linda Heisig and Robin Beers.

Her own personal experiences—with her mother and with her own procedures—made her empathetic. She personally knew and understood women's motivations for procuring the procedure.

In the abortion industry, Laura found independence. As a provider of illegal abortions, Laura earned a steady income so that she could support herself and her children. She earned enough to be able to tell Glen that he did not need to send them money anymore. She hired a housekeeper, bought a new car, and put a down payment on a three-bedroom, two-bathroom house with a double garage. She not only helped women exercise their own reproductive freedom, she gained financial independence, stability, and the ability to

provide a comfortable life for herself and her two children.[242] Women abortionists had multiple reasons for getting into the industry. As part of extended female networks—per Leslie Reagan—they may have been more accessible, and women seeking abortions may have felt more comfortable approaching other women with their condition. On a more personal level, many of these women abortionists understood their patients' predicaments and attempted to help them the way (perhaps) someone had helped them before.

Laura Miner established herself, and would become a member of PCAR when it spread to San Diego. The PCAR building in San Diego had nine rooms and Laura became the office receptionist and nurse. She went to Los Angeles to learn the procedure under Dr. Watts. When she came back to San Diego, Dr. Ross—who was supposed to run the clinic—would often leave to play golf all day, trusting Laura to perform all of the procedures. Since she performed the procedures, Laura hired her own nurse and receptionist. Women would refer their friends to the clinic and they would ask for Laura Miner by name. Eventually, Dr. Ross was moved to the Hollywood location, leaving Laura to run the San Diego office.

PCAR—the Pacific Coast Abortion Ring—would become a large, coast-wide abortion mill that provided safe abortions to hundreds (if not thousands) of women in California, Washington, and Oregon. Its rise and fall, the topic of the following chapter, outline this extensive abortion mill, how it was unique, and how its success—specifically, its ability to perform safe abortions, illegal abortions without injury or death—contributed to a shift in the ways law enforcement and prosecutors tackled illegal abortion in California.

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[242] Glen remained in Arizona because he did not care for San Diego. The two began to drift apart, only seeing each other once a month or less. Since her hours were from 10am to 4pm, she had plenty of time to spend with her children. She started to attend Chiropractic College in the evenings to earn her own credentials, and at the end of 1935, Laura and Glen divorced. Draft of letter from Laura Miner to Steve (no last name), April 9, 1965, San Diego, California and Notes from Tehachapi, Courtesy of Robin Beers and Linda Heisig, Laura Miner's granddaughters.

Chapter 5: The Pacific Coast Abortion Ring:

> "The story he told revealed the most amazing and revolting criminal conspiracy in the history of medical science. It revealed the unbelievable scale on which the meanest and filthiest of all rackets—the abortion racket—is carried on. It was a story of shame, blood, pain, disgrace, greed, and death; of how the red-gloved abortion quacks, dominated by master criminal brains, fatten on the profits from the murder of the unborn."
> —Edward S. Sullivan, "Smashing California's $100,000,000 Abortion Ring," *Real Detective*, February 1937.

In 1934, Reginald Rankin arrived in Portland with the hopes of establishing an abortion syndicate. Rankin knew that abortion's illegal status meant he could earn huge profits. He went to Portland to seek out Dr. George Watts, specifically. Watts, an abortion specialist, had been practicing in Portland for some forty years. Rankin sought Dr. Watts because over the course of his career, Watts had developed a new method of performing abortions—using a "vacuum aspiration technique"—that had been safe and effective enough to keep him under the radar of law enforcement.[243] When Rankin met with Watts, he proposed his idea for an organized criminal syndicate that would span the entire west coast—from Seattle to the U.S.-Mexico border.

Our modern conception of organized crime is a direct descendent of the Prohibition era. Just days after the Volstead Act and the Eighteenth amendment passed, police in Chicago were indicted for accepting bribes and selling confiscated liquor. The public assumed that law enforcement colluded with bootleggers because of society's vast contempt for the law. Prohibition of alcohol created an environment where those who were willing to break the law were merely catering to the demands of like-minded consumers who didn't believe consumption

[243] This innovation was significant because it reduced the chance of infection/sepsis by removing all fetal tissue from the uterus. Rickee Solinger, *The Abortionist: A Woman Against the Law* (New York: The Free Press, 1994), 58.

of alcohol was *really* a crime. Crimes like alcohol consumption, prostitution, bootlegging, and abortion—crimes that are *mala prohibita*, behaviors that are wrong because they're illegal—are less clearly defined in contrast to crimes that are *mala in se*, like murder and theft. Crimes that are *mala prohibita* pose a challenge to law enforcement since—because of their connection to the black market—they are highly profitable, poliferate, and expensive to prosecute. As a result, these crimes are often only brought to the public's attention via sporadic, and selective, crackdowns—a method of law enforcement that would be unacceptable for *mala in se* crimes like murder.[244] Typically, *mala prohibita* crimes involve some kind of middle class involvement. They are crimes in which the middle class consumes, or, expresses some desire to continue practicing the behavior regardless of its legality.[245] The public is split over *mala prohibita* crimes. Since some people still want to partake, there is no "moral consensus" about the law or the action the law is criminalizing.[246] Because of steady middle-class demands for things like prostitution, alcohol, and abortion, individuals and organizations work to cater to these demands. When a middle-class commodity like abortion or alcohol becomes illegal, its value increases exponentially—creating an opportunity for organized crime to step in and take advantage of the situation.[247]

In that same vein, the idea of an organized abortion mill was not necessarily a new one. Rather it followed the organized crime model. While there may have been other organized abortion rackets, Rankin's was unique in terms of his vision for its scope. While other abortion mills and clubs in the U.S. were more restrained, Rankin's syndicate was a testament to his character. He had a big personality, thought he was above the law, and wanted his massive

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[244] Luker, 75.
[245] Dennis Kenney, *Organized Crime in America* (Belmont: Wadsworth, Cengage, 1995).
[246] Luker, 75.
[247] Similar arguments have been made about the impact the "war on drugs" has had on the presence of the Mexican drug cartel in the United States.

abortion racket to represent that. Other abortion mills certainly came to the attention of law enforcement. In New York, for example, Health Commissioner Hubbard estimated that some 100,000 women went through New York's most prominent abortion mill while another New York physician put that number at around 250,000 per year and called it "one of the safest, best protected, as well as one of the most vicious rackets in the city."[248] In New Jersey, Leslie Reagan discussed the "Birth Control Club" that operated like a warehouse version of an abortion clinic. The approximately 800 card-carrying members of this club paid a fee that allowed them as many abortions as they needed. These women—many of them clerks in Newark offices—used membership in this club as a form of health insurance because they were *expecting* they might need an abortion in the future. Much smaller rings operated near Park Avenue where one of three or four physicians would perform an abortion for the elite women in New York for between $1,000-$3,000. In the event that the police arrested one physician, the other physicians in the ring would immediately testify that the aborting physician had consulted with them and they determined the abortion was medically necessary.[249]

Typically, criminal organizations possess several qualities, among which are an organized hierarchy, long term goals, profit through illegal activities, neutralization of public officers, and providing illegal goods or services. The Pacific Coast Abortion Ring possessed these qualities. Rankin, Watts, and Joseph Shinn—their accountant—positioned themselves at the top of this criminal organization. They hired abortionists at will and moved them around at their own discretion. Their plan was to extend their organization of abortion clinics along the entire west coast. Rankin and his cohort were methodical in their planning for the expansion of their enterprise. They moved their doctors around periodically in order to avoid a feeling of

[248] B. B. Tolnai, "The Abortion Racket," *Forum and Century*, vol. 94, no. 3 (Sept. 1935), 176.
[249] Reagan, *When Abortion Was a Crime*, 134 and Tolnai, 176.

comfort, community, or ownership. These offices and their revenues belonged to Rankin. Everyone else was replaceable. Rankin, Watts, and Shinn were sophisticated and organized. They paid off law enforcement and members of the Board of Medical Examiners in order to avoid prosecution. The possibility of supplemental income in exchange for turning a blind eye to illegal activity may have been more than enough incentive for some. Rankin and his cohort also profited from providing illegal, yet highly desirable, abortions to women. They made illegal operations accessible to the public and relatively easy to acquire.

When Rankin proposed his idea to Watts, he fed into the ego of the aging doctor who, until recently, had been planning to retire.[250] Rankin had been successful in some tax and real estate ventures in Los Angeles until the Great Depression, and already knew his way around bribing officials and avoiding the law. It is not clear whether Rankin had a stake in women's issues besides what their misfortunes could bring to his pocketbook, but Watts believed Rankin to be a humanitarian with a noble goal. The two men came to an agreement in which Watts would turn over 50% of his net profits to Rankin in exchange for his business, financial, and tax expertise.

Between 1934 and 1936, Rankin brought on several more abortionists and offices. For example, in 1934 he brought on Dr. Ross, who had an office on Hollywood Boulevard, and moved him to another office in San Diego. He hired Dr. Beebe, and a female steerer.[251] Later, he hired Dr. James Beggs. In 1935, he hired Dr. J. E. Folsom in Oakland and moved Dr. Beggs to that office. He bought Dr. Polsen's abortion business in March 1935 because he was particularly interested in using Dr. Polsen's cottage just outside of Oakland for term cases that needed

[250] Dr. Ruth Barnett, DC was first introduced to Dr. Watts when she needed an abortion. Eventually, she became one of the most prominent and successful abortionists in Oregon with a career that spanned approximately 50 years. For more information on this fascinating woman, see Solinger, *The Abortionist*.

[251] "Steerers" solicited business for the clinics. They would approach pharmacists and doctors and encourage them to "steer" potential clients towards their clinics.

additional treatment. Rankin had an office in San Francisco by 1935, and had bought out Dr. Lawrence Guibbini's office in San Jose. In the middle of 1935, he brought on Dr. Wilson and Dr. Norman Powers, both from Seattle. He put Dr. Powers in the newly-opened Long Beach office and Dr. Wilson in San Francisco—where Rankin had two offices in the Elkin-Gunst Building. Rankin moved his abortionists around periodically for additional security. In the event that there was an investigation about a procedure, the abortionist who performed the procedure would be moved. Once the investigation started, there would be no one practicing in that office by that name. Rankin also implemented that practice to deprive his doctors of a sense of ownership. He did not want his abortionist to get too comfortable in a particular office—this also explains why he would move abortionists from their own clinics to different clinics once he bought them out. In order to move his employees, Rankin owned "a fleet of airplanes with landing fields both in Oregon and on an isolated ranch hidden in the mountain regions of… Northern California…"[252] The ranch in northern California also functioned as a hideout in the event that one of his abortionists needed to stay out of sight after a bad operation. The uniformity that Rankin employed—in terms of office layout and procedures—made moving his abortionists easy.[253]

When Dorothy Woods needed to go to the hospital after her abortion with Dr. Watts, Rankin deliberately sent two *different* physicians to her bedside so that she would not be able to make a positive identification.[254] When the police investigator asked her if she recognized either of the men as the man who performed her procedure, she said she did not and signed a document

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[252] Charles B. Pinkham, M.D., "The Pacific Coast Abortion Ring," *California and Western Medicine*, vol. 46, no. 5 (May 1937), 350.

[253] Sullivan, "Smashing California's $100,000,000 Abortion Ring," *Real Detective,* pg. 72 in BME, F3760:823, and Dr. Robin Beers, "Laura Miner," Hillquest Urban Guide, http://www.hillquest.com/history/joyce-beers-mother-laura-miner/.

[254] *People v. Rankin*, 707.

stating that she did not recognize the man who performed the operation on her.[255] When Dorothy Woods acquired an attorney to establish a case against Dr. Watts, Rankin attempted to offer her $100 then $110 to stop her. Dorothy's mother, Margaret Nichols, refused the offer because she said the $110 did not cover the medical bills and hospital stay that Dorothy required. Needing to hear no more, Rankin sent money via Western Union to the Seaside Hospital in Long Beach where Dorothy was staying, and to the doctor at the hospital who had to perform her operation—over $300 in total. After that, Dorothy and her mother did not pursue further action against Rankin and remained quiet until the court subpoenaed them later. When complications from Mrs. Josephine Perat's late-term abortion by Dr. Watts compelled her to seek outside help, her nurse called Dr. Watts to urge him to see Perat at her lying-in hospital. Dr. Watts claimed he knew no patient by that name, told the nurse he objected to getting involved, and told the nurse we would call the Board of Medical Examiners to investigate her facility—nevermind that the BME agent he called, William Byrne, was on Rankin's payroll.

It appeared that the California BME had wind of the Watts-Rankin syndicate from nearly the beginning. In 1934, Verne L. Ferguson, Chief Complaint Deputy to Buron Fitts, the District Attorney for Los Angeles County, wrote to Dr. Pinkham inquiring about Dr. G.E. Watts. Ferguson specifically asked if Watts was licensed to practice medicine in the state of California, what his address was, and what the BME knew about him. Dr. Pinkham responded: "Our files indicate that George E. Watts, M.D., was licensed to practice in this state in 1899 on presentation of his medical diploma, and that he thereafter located in Portland, Oregon, where, according to reports, his practice has been largely abortions."[256] Dr. Pinkham explained that Dr. Watts had moved back to California and established his office at the Signal Oil Building at 811 W 7th Street

[255] *"…this is to certify that the two gentlemen with Mr. Cunningham are not the men who performed the operation on me." People v. Rankin*, 904.

[256] Letter from Dr. Pinkham to Buron Fitts and V.L. Ferguson, September 22, 1934, BME, F3760:820.

in Los Angeles "for the asserted purpose of inaugurating a chain of abortion offices along the Pacific Coast."[257] In November of 1934, Rankin even met with Pinkham. Responding to BME assertions that they were operating a chain of abortion clinics, Rankin claimed he just handled taxes for nearby abortionists. That he had no interest in the business, and that Dr. Watts was merely an acquaintance.[258] It also appeared that the BME had the office under surveillance—claiming that the office was busy from 8am through 6:30pm, particularly at noon when girls would get the procedure done during their lunch break.[259] Someone in Portland had apparently tipped off the San Francisco BME as to what Watts' intentions were. The anonymous tipster mailed a letter to the Board. The front of the letter was Watts' professional announcement that he was leaving Portland. On the back, the tipster wrote: "Dr. Watts is located permently[sic] in Los Angeles Calif. Office in Signal Oil Bldg. It is his intentsions[sic] to open up a chain of abortion offices in Washington, Calif, and Oregon. Look him up."[260] The Los Angeles BME was also aware of the syndicate's methods of buying protection. According to Pinkham, two agents for the syndicate would approach law enforcement officers they felt might "menace" their business. The agents would offer the names of *other* abortionists (abortionists who were unwilling to join the syndicate) so that the officers could arrest their competition. The agents even offered to pay several law enforcement officers off each month.

Rankin's plan organized a group of medical professionals who specialized in abortions. To most women, a visit to a PCAR clinic would resemble a visit to an ordinary physician in most instances—with the exception of being blindfolded or having multiple doctors in the room at a time in order to confuse the patient so she wouldn't know who *actually* performed the procedure.

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[257] Ibid.
[258] *People v. Rankin*, 772-775.
[259] Letter from Dr. Pinkham to Buron Fitts and V.L. Ferguson, September 22, 1934.
[260] Ibid.

Rankin wanted his clinics, doctors, and nurses to be interchangeable—all with the same equipment and same procedures, headed by licensed physicians who trained *under* Dr. Watts for uniformity. Watts moved south to Los Angeles where he and Rankin established their headquarters. With each office operating with "a doctor in the office, a doctor's name on the door" Rankin believed the entire enterprise would appear legitimate and safe, and would therefore be unassuming. Watts left Oregon and allowed his friend Dr. Harry Houston to take over that office—which was now part of the syndicate—but only after Houston spent a few days with Watts to learn his techniques. By 1936, the Watts-Rankin outfit spanned three states—California, Washington, and Oregon, and had offices in their major cities: San Diego, Long Beach, Hollywood, Los Angeles, San Francisco, Oakland, San Jose, Portland, and Seattle.

To secure a steady client base, Rankin hired "steerers." Among them, Rankin recruited his brother-in-law, Marvin Raithel. For a salary of $300 per month, Raithel, a regular druggist in San Jose, solicited business for the syndicate. He would contact medical supply houses, doctors, and pharmacists and encourage them to refer their female clients to one of their clinics. For their referrals, the syndicate paid the referrer a thirty to fifty percent commission to encourage them to continue doing so. Raithel recruited mostly for the clinics in San Francisco and Oakland, though Rankin had other steerers performing the same job up and down the Pacific coast.[261]

Once a woman arrived for treatment, she would tell the nurse or receptionist how far along she was in her pregnancy. The further along she was, the more the procedure would cost. Ideally, the clinic would charge between $35 and $50 per procedure—though this was not concrete.[262] That price only applied if the woman was in her first six to eight weeks. Rankin told his employees that the purpose was to charge more when possible and profit at least $25 per

[261] Sullivan, 15.

[262] With inflation, $35-$50 in 1936 would have the same buying power as approximately $599.36-$856.23 in 2014, using the Bureau of Labor Statistics Consumer Price Index Inflation Calculator.

procedure—*after* paying any commissions. If the woman was about ten to twelve weeks along, the clinic should charge between $50 to $75 or $100. Beyond twelve weeks, the clinic was to collect as much as possible--$200, $250, or even $300.[263]

Once the patient agreed to a price, the nurse took down her information and any steerer information. The receptionist would then have the patient sign a consent form wherein she agreed to submit to treatment by Dr. [Blank]. Rankin demanded that the doctors' name remain absent from the form so that it could be manipulated in the event of a complaint.[264] Once the office staff collected fees and forms, the nurse would escort the patient to the operating room and prepare her for the procedure.

After the nurse prepped the patient, the doctor would come in at the last minute. Rankin wanted the clinics to take as many of the cases that came in as they could, and to get as much money from each client as possible, and to only turn away the clients they didn't care to do.[265] For their own protection, Rankin told his staff to refuse service to any woman who appeared to have attempted her own abortion, and to refuse service to any woman who appeared to be on the verge of an infection. If she were to fall ill, the police would take a dying declaration and she would likely cite the last doctor who treated her—someone in their office—instead of her own attempt. Therefore, for their own safety, doctors were to make sure that there was nothing wrong with the woman before they began.

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[263] *People v. Rankin,* 258. $75-100 in 1936 is approximately $1,284.34-$1,712.45; $200 in 1936 is approximately $3,424.91 in 2014, $250 is approximately $4,281.13, and $300 is approximately $5,137.36.

[264] For example, if Dr. Watts had performed the procedure and it didn't go well, the nurse or Rankin would write in the name of another abortionist in the syndicate—Paul De Gaston, for example. If the investigation started, the woman would be asked to identify Paul De Gaston. This would result in her not being able to identify the man she had consented to receive treatment from. The official form submitted into evidence read: "I hereby declare that I am at this time freely and voluntarily applying to Dr. (blank) for treatment. I believe my *condition* demands immediate medical and surgical attention and therefore give consent to such treatment as the doctor may determine in the premises; that I have read the above statements and am fully aware of the contents thereof, and state that I believe that same contains a true statement of my physical condition." Emphasis mine. On the same document were spaces marked "condition" and "treatment" which were left blank but could be manipulated in the event that legal action required. Exhibit 24 in *People v. Rankin*, 254-255.

[265] *People v. Rankin*, 258.

At the end of the day, the office nurse would deposit the money from the day into an account held in Rankin's name. Shinn requested copies of all deposit slips and copies of all the personal information secured from the patients. Together, Shinn and Rankin made all decisions on the business end of the racket. By the fall of 1935, the two decided to expand the business by incorporating "a credit arm."[266] This new project, The Medical Acceptance Corporation was an extension of their abortion racket that allowed them to profit off women who did not have the money for their abortion upfront. By creating a financial arm that represented itself as a separate entity, a supposed third party company that financed medical procedures, PCAR was able to make *more* money from each woman for each abortion. For example, if a woman came in, but did not have enough money, the office nurse would send her to the Medical Acceptance Corporation—coincidentally, located near each PCAR branch. The patient needing the procedure would go to the MAC office with a note with the agreed-upon price for the procedure from the PCAR office. If, for example, the agreed price was $50, the MAC manager, would finance the woman for $75. The MAC employee would convince the woman that the additional $25 was for him to finance the bill at the office. Once the woman agreed to the new, higher price, MAC would take collateral, call the PCAR office, and send the woman back to have her abortion.

Rankin's physicians performed abortions using a standard dilation and curettement if the woman was before her 12th week of pregnancy.[267] The physician would administer a local anesthetic and use a speculum to open the woman's cervix. If the fetus was too large, the doctor would use a set of forceps or an "obstetrician's guillotine hook" to dismember the fetus and remove it piece by piece from the womb.[268] After that, the doctor would use a curette—a spoon-

[266] Sollinger, 67.

[267] Dilation and Curettement: Opening or dilating the cervix, accessing the uterus, and performing a curettement—scraping and removing material from the uterus with a curette, or spoon-like medical instrument.

[268] *People vs. Rankin*, 760.

like device—to scrape her uterus and remove any large fragments of material. As a final measure to make sure they had removed all foreign material, the doctor would perform a suction of the uterus with a metal catheter attached to a hose (Watts' vacuum aspiration method). If the woman was beyond 12 weeks pregnant, she was a "packed case."[269] For packed cases, the doctor would dilate the cervix and fill the patient's uterus with gauze. This procedure induced premature labor. They would transport the woman to another location where she would miscarry. Rankin's main man, Paul De Gaston, claimed he never witnessed an abortion where the woman was beyond 5 months pregnant; however, one of the nurses suggested that they took cases as late as seven and eight months and ran the fetuses through the sewer.[270] In his testimony, Paul De Gaston claimed that in the in the Polsen cottage near Oakland, the nurse would dispose of the fetuses in the furnace.[271] Most women who received standard D & C's were able to leave that day. Others—particularly packed cases, others who had complications, or others who paid for additional time—stayed in a room to lie in until they were well enough to leave.

Rankin's previous work as a "tax factor" taught him everything he needed to know about bribery, allies, and protection. In part, he was able to profit from his doctors' tenuous positions. They needed work during the Depression and abortions remained particularly profitable since few women could afford to bear children—whether out of fear of losing their jobs, fear of being unable to provide for *this* child in addition to existing children, or just because they didn't want children yet. Rankin secured a steady clientele and provided protection for a cut of the profits. Rankin's main job was to "neutralize" the law and he found a well-placed ally early on. William Byrne was a special agent in Los Angeles for the California Board of Medical Examiners. He first appeared in their directory in January 1928. The BME paid Byrne to investigate individuals

[269] *People v. Rankin*, 333-334.
[270] Solinger, 83.
[271] *People v. Rankin*, 407.

accused of violating the State Medical Practice Act—specifically irregular practitioners of medicine and abortionists. He had been in the BME's employ for approximately six or seven years when Rankin found him. Perhaps he was bored, or perhaps he wanted a bigger salary. Regardless, Rankin supplemented Byrne's income, and in exchange, Byrne violated his oath of office.

Byrne's first job for Rankin was to get rid of evidence in the murder case against Paul De Gaston.[272] In 1934, De Gaston, a Hollywood concert violinist, was charged with the murder of Irene Eilert, a "dazzling blond 'butterfly' divorcee of the film colony."[273] The police charged him after they found her body in De Gaston's house following "a crudely performed abortion."[274] De Gaston was unique, and perhaps that's why Rankin was drawn to him. He was born in China and studied in China, England, and Germany, before eventually going to medical school in France. He never actually practiced professional medicine, though. Shortly after receiving his Doctor of Medicine from Sorbonne in 1916, he volunteered for the French army during World War I and moved to the United States after his term. He moved around the States, failing numerous sales ventures. When he arrived in Hollywood in 1925, he had hopes of becoming a film star. Some directors were initially intrigued with his jet-setter lifestyle, but alas De Gaston had no acting talent—at least not enough to get him beyond some minor roles here and there. In order to make ends meet, De Gaston supported himself by performing the occasional abortion. Rankin became aware of De Gaston through his network in Los Angeles. Just days after the two agreed to go into business together, De Gaston's run-in with Ilene Eilert happened.

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[272] During World War II, De Gaston was interned as a German sympathizer in an American concentration camp. Later, he would eventually emerge was one of the primary suspects questioned in the Black Dahlia case in Los Angeles.

[273] Sullivan, 12.

[274] Ibid.

Ilene Eilert had been estranged from her husband, George for a short period. She worked at a beauty parlor and was in her early 20s.[275] She came to know De Gaston through her friend, Miss Louise Eldridge. Miss Eldridge accompanied Ms. Eilert to De Gaston's house and left. Later that day, De Gaston called Eldridge to say that Eilert was unwell but appeared to be doing better. Prosecutors claimed that De Gaston had administered an anesthetic and performed a procedure on Miss Eilert. The court even hired a chemist to testify that rouge stains on a face mask in De Gaston's office were a chemical match to Eilert's rouge. De Gaston maintained he did not perform an abortion on her. Instead, he claimed that she was a casual acquaintance. When she came over, she asked for a drink of water and died suddenly before he could call for medical aid.[276] He suggested that she probably ingested drugs to induce an abortion before she visited him.

While Byrne was working for the BME to build a case against De Gaston, he was simultaneously destroying the same evidence for Rankin. Rankin visited De Gaston while he was in jail. The conniving man he was, Rankin asked De Gaston whether he was having financial trouble. Rankin assured De Gaston that if he gave him the names of the druggists and physicians who referred their clients, he would take care of the patients and send De Gaston part of the profits to help him out.[277] The court had charged De Gaston with murder, abortion, and practicing medicine without a license. De Gaston had spent approximately five months in jail and when he was released in January of 1935, Rankin asked him to visit him at his office in the Signal Oil Building. Because of Byrne's intervention, De Gaston was acquitted of the abortion

[275] Some sources say she was 22 years old, others say she was 25 years old.

[276] "Death Inquiry Has New Turn," *Los Angeles Times*, August 14, 1934, A8. "Chemists Offer Testimony in Operation Case," *Los Angeles Times*, December 18, 1934, A1.

[277] *People v. Rankin* (1937), Court Transcript, 102.

and murder charges and Rankin now felt that he had bought De Gaston's loyalty and services rather cheaply.[278]

When De Gaston met with Rankin after his release, Rankin gave De Gaston $50 to help him out and introduced him to Dr. Watts. Dr. Watts asked De Gaston about his medical training and how familiar he was with gynecological procedures. Rankin bragged about Dr. Watts's aspirator technique and referred to the contraption as "the sucker." De Gaston began to work for Rankin but was too shy to solicit clients. He had not performed any procedures in the first month of Rankin's employ. By February 1935, Rankin was getting impatient. He told De Gaston to go and get a case—regardless of whether or not the woman could pay—so that he could perform a procedure under Dr. Watt's guidance. With his new instructions, De Gaston "passed word along Hollywood Boulevard and got one."[279] De Gaston brought his test case to the Signal Oil building and performed his first abortion as a part of the syndicate. Dr. Watts commended him and told him he "had it very clean."[280]

Rankin knew he had De Gaston on a leash. Rankin told De Gaston that once he had earned back the money that he loaned him to help with his legal troubles, he would pay him $300 for the first month, $500 per month for the next two months, and thereafter $750 per month. De Gaston agreed. Now that his legal troubles were over, and he had performed his first procedure successfully, he officially began to work for Rankin. Rankin secured De Gaston a fake license to practice medicine from a defunct medical school since his real name was "too hot." With the help of a Mr. Davidson, another BME special agent, De Gaston now had papers with the name of Dr. J. F. Harsh, a licensed Oregon physician. After just eight or ten days of working at the Signal

[278] De Gaston wanted to fight the third charge—practicing medicine without a license—but Rankin said it was in bad taste and that he and Byrne could fix it for a couple hundred dollars.

[279] *People v. Rankin*, 235.

[280] Ibid., 240.

Oil Building, where he claimed he performed approximately 40 abortions, Rankin moved De Gaston to San Francisco. De Gaston became Rankin's errand boy. Since he did so well, Rankin would frequently send De Gaston out to teach the other abortionists Watts' technique—possibly because the elderly Watts could not keep up. Rankin felt like he owned De Gaston and moved him around the syndicate at his discretion. He felt the same way about Byrne. When he was not busy fixing Rankin's legal troubles, Byrne offered another service to the syndicate. Since part of his job for the BME was to find and build cases against abortionists, Byrne knew where he could find Rankin's competition. Byrne would visit these small abortionists up and down California and would wear both of his hats. On one hand, he could claim that Rankin was interested in their business, and it would be in their interest to fall in line. If they refused, Byrne could strong arm them and make their lives difficult as an officer of the BME. Joining the syndicate may have seemed like a good opportunity for the abortionists Byrne encountered. Byrne offered salaries of up to $1,000 per month and protection—neither of which most of these abortionists could aspire to have. Joining the syndicate made these small abortionists pegs in a machine that was destined

Signal Oil, View 1, 1920, Security Pacific National Bank Collection, Los Angeles Public Library Photo Collection.

to function despite the economic undulations of the Depression. It offered these people—who were outside the law—a sense of security to be a part of something greater.

Some abortionists refused. When they did, they faced harassment from Byrne and Rankin. On one occasion, Rankin tried to get a Long Beach abortionist to join his empire. When he refused to join, Rankin staged a fake arrest of the office nurse—essentially kidnapping her until the abortionist relented. When Rankin and Byrne approached Dr. Blanche Ramer of San Diego, she immediately contacted the Board of Medical Examiners and told them that a man by the name of William A. Byrne initially "balled on her and 'bawled her out' for doing abortions." After yelling at her, he then gave her Dr. Watts' card and told her it would be better for her to refer her clients to him instead of doing them herself.[281] Byrne left, and the following day, Rankin approached Dr. Ramer and explained that if she referred her clients to Watts, they would extort all the money they could out of the clients, then send her half of the profits, though it does not appear that she gave in.[282]

In 1935, Rankin bought out the Heddens clinic in San Francisco on 2240 Van Ness Avenue. "Clinic" was really an aggrandizement. Harley Heddens and his wife, Rose Marie, operated an abortion business out of their apartment. Rose Marie was the steerer and Harley performed the procedures. Harley was a trained engineer who possessed no medical knowledge. His abortions were notoriously crude. Heddens learned how to perform abortions from an old German physician, and he performed his operations on a board he laid across his bathroom bathtub. At the time that Rankin purchased their business, they were on trial for the abortion-related death of 16-year-old Ruth Attaway. Rankin took advantage of their trouble and purchased

[281] Letter from Special Agent Albert Carter to Dr. Pinkham, June 23, 1935, BME, F3760:820.

[282] From what information I was able to gather, Ramer didn't bow down, and Rankin did not pursue business with her. Laura Miner was working well for Rankin in San Diego by this time, and Rankin became preoccupied with expanding his empire north. Personally, I think Rankin may have thought that Ramer would have been difficult to work with and decided to drop the matter.

their location and phone number (so that existing networks could continue to refer without interruption) at a rock bottom price.[283] When police questioned Harley Heddens, he claimed his wife wasn't involved. Ruth Attaway "died of septicism and septic pneumonia" following her abortion with Heddens. Though Heddens gave the police a full confession, he later claimed they obtained it under duress. After investigating further, police did not believe that Rose Marie was innocent. The pair ultimately pled guilty to manslaughter. Harley Heddens went to San Quentin, and Rose Marie Heddens to Tehachapi State Prison for Women.[284]

Rankin moved De Gaston to the Van Ness location while he looked to buy out other practices in Seattle. Around the middle of 1935, Rankin bought out Dr. Hart's practice in the Joshua Green Building in Seattle. This office, however, did poorly. PCAR was charging $50 and up for abortions in other clinics; but most abortions in this building were struggling to get between $20-$40. Dissatisfied with how his only Seattle office was performing, Rankin bought Dr. W. Norman Powers' office at the Security Building. Dr. Powers was a Seattle abortionist. He had been a physician and surgeon for about thirty years. In 1929, a jury convicted him of performing an abortion on a 16-year-old girl, but by 1935, was back in business and eager to hear about Rankin's proposal.[285] Once Rankin had Powers' office, he moved De Gaston up to Seattle under the alias Dr. F.T. Read, a graduate of the now-defunct Bennett University in

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[283] The Hickok and Mottard cases have already established that a poor reputation did not put an abortionist out of business necessarily. Women desiring illegal abortions were stuck with that they knew about, what their extended female networks knew, or what they could get.

[284] "Girl Death Quiz Opens," *Los Angeles Times*, August 21,1935, A2; "Bail Fixed for Heddens," *Los Angeles Times*, August 23, 1935, A2; "Confession Recorded in Pair's Trial," *Los Angeles Times*, October 9, 1935, 8; "Heddens Plead Guilty Over Operation Death," *Los Angeles Times*, October 15, 1935, A2. By 1940, Rose Marie had been released, took custody of their daughter, left Harley (though they were still married) and moved in with her parents. Harley was paroled in 1939 or 1940. In 1940, he was accused of murdering Ms. Bertha Hewitt as a result of an illegal abortion. He fled San Francisco, began working as a manager for an electrical company, and vaudeville mindreader. He was captured in Indiana and extradited to California where he returned to San Quentin with a new term in 1941. He died while on parole in 1952.

[285] "Martin Gives Full Pardon to Dr. Powers," *Seattle Daily Times*, October 8, 1936.

Chicago. Once in Seattle, De Gaston trained Dr. Powers and Dr. Eric Wilson—the man Rankin wanted to run Powers' former office—and stayed there.

From the beginning, Rankin suspected Dr. Wilson was going to give him trouble. He thought Wilson was misreporting numbers, hiding receipts, and pocketing money. Moreover, he suspected that Wilson was pulling De Gaston away from him.[286] Rankin's concerns were appropriate. With the general autonomy Wilson and De Gaston had in Seattle—far from Los Angeles—they thrived. Dr. Wilson began to wonder why they were sending half of their profits to Rankin. Wilson thought they were fine on their own, and began to complain. Wilson told Rankin he did not need him, and that if Rankin wanted them to stay around, he needed to fix his management style, promptly settle their MAC accounts, and streamline paperwork processes for their own convenience. Rankin tried to propitiate Wilson. Rankin even allowed Wilson to buy a portion of the business in that office. This was not enough for Wilson, though. He continued to push until Rankin finally relented. On November 20, 1935, Rankin sold Wilson all of his interest in the office in the Securities Building, and, perhaps worst of all, he turned De Gaston's services over to Wilson as part of the sale.

Rankin regretted the sale immediately. Specifically, he hated that De Gaston went with Wilson and wanted him back. For the next month, Rankin wrote De Gaston tirelessly. He threatened De Gaston and Wilson both in the letters. He despised Wilson's independence and thought of all the money they were making without him. He told De Gaston he would have him back and that Wilson's actions were going to get him into trouble. Despite Rankin's efforts to divorce the abortion providers from their community by moving them around, Wilson claimed ownership of the Seattle office and he took De Gaston—the man Rankin had personally claimed—with him.

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[286] Sollinger, *The Abortionist.*

By April of 1936, Rankin used his connections, acted out on his threats and had Wilson and De Gaston arrested. When De Gaston and Wilson's attorney proclaimed that his clients were "framed" for defying Rankin's "coastwide abortion syndicate" the claim garnered wide publicity. It was the first time many in law enforcement (outside of the Board of Medical Examiners, and outside of the local police receiving a cut) heard about the expansive syndicate. Rankin's efforts to exact revenge ultimately piqued the interests of Inspectors Charles Dullea, George Engler, and Harry Husted of the San Francisco Police Department and brought about the end of the Ring.[287]

At the end of a routine investigation into an abortion-related death in San Francisco, the investigators asked BME Secretary-Treasurer Dr. Charles Pinkham if the "sensational stories about a hundred-million-dollar abortion syndicate on the Pacific Coast" were true.[288] Pinkham claimed they were but that there was little his office could do about it because of the ways that the abortionists moved around and how well paid off some doctors and law enforcement officers were. This dare of sorts compelled the San Francisco investigators to look into PCAR. When investigators Dullea, Engler, and Husted told Pinkham they were going to look into the matter and arrest the members of the syndicate, Pinkham just shrugged, told them where the headquarters were, and wished them luck.[289]

Shortly thereafter, Captain Dullea urged Inspectors Engler and Husted to exclusively focus on the Watts-Rankin syndicate. On June 2, 1936, they started their investigation at the Medical Acceptance Corporation in the Elkan-Gunst building in San Francisco. When the investigators asked Mr. J. Clinton Perry, the local MAC manager, about the nature of MAC's business, Perry simply stated that they provided loans for patients who could not afford their medical treatment. Englert and Husted asked which physicians MAC worked with, but Perry

[287] Sullivan, 12.
[288] Ibid.
[289] Ibid., 13.

refused to answer. When asked if he did business with Dr. Ross—one of Rankin's men upstairs—Perry responded he did on occasion. The investigators went upstairs and asked for Dr. Ross, but he was not there. However, the investigators did meet Marvin Raithel, Rankin's brother-in-law, and encouraged him to leave with them.

The investigators brought Raithel to the Hall of Justice where they interrogated him. Raithel explained the Ring's beginnings and organization. Raithel spoke to his interrogators for hours and gave District Attorneys in San Francisco and Los Angeles sufficient information to acquire search warrants. The following day, Assistant District Attorney John McMahon, Captain Dullea, Inspectors Harry Majors, Frank Lucey, Engler, and Husted, and Assistant District Attorney Frank Coakley of Alameda County conducted a raid. They began at the Van Ness location—the former Heddens location, and the apartment Rankin was living in at the time. When the law enforcement officers descended upon the apartment, no one was home. They found the apartment equipped to perform abortions with cots, surgical tables, and surgical equipment. The investigators found case cards with patient names and commission slips. During the investigation, Mrs. Violet Rankin, Reginald's wife, came home. The police immediately arrested her.

Next, the investigators went back to the Elkan-Gunst building to investigate the clinic. Inside, the found the offices lavishly furnished with rich walnut desks and elegant paintings. The police arrested J.C. Perry and nurse Leola Habel. With them out of the office, they gathered the plethora of abortion tools and seized the massive collection of records. Inside the MAC office, they busted the safe and found the syndicate's books—"with listings of profit and loss."[290] The last month in the book—February—showed that the Signal Oil office had a net profit of $5,000, Long Beach $1,000, and Hollywood $1,800 after all commissions and expenses. From the Elkan-

[290] Ibid., 72.

Gunst building, the investigators moved quickly to Dr. Beggs' office in Oakland where they found similar materials.

The investigators poured over the patient cards they recovered from the Elkan-Gunst and Van Ness buildings. Most of them were dead ends since the women provided fake names. When Perry told the investigators that he shipped his records to the Los Angeles headquarters every month, it became clear to the investigators that they would have to raid the Los Angeles office next. McMahon had Engler fly down to Los Angeles. He called District Attorney Buron Fitts to prepare him. However, when Engler and Fitts raided the Signal Oil building with Los Angeles Police Detectives Patton and Ledbetter, it was clear that the Los Angeles office had been tipped off. Between the Signal Oil Building, the Hollywood office, and the Long Beach office, though, the investigators were able to gather two truckloads of evidence. Most interesting to the investigators was a collection of furs and jewels—including wedding and engagement rings—that Dr. Watts had collected as collateral for payment.[291]

The investigators found more patient cards and set out to question the women whose names appeared on them. They left detectives in the offices to work as switchboard operators and take the names and addresses of women seeking appointments. When Engler went back to Northern California, they investigated the San Jose office, but someone removed or destroyed all vital evidence. Regardless, the joint task force believed they had enough evidence to mount a case against members of the Pacific Coast Abortion Ring.

[291] Ibid., 73.

News of the syndicate spread throughout the country. Dr. Eric Wilson began distributing pamphlets urging physicians to be mindful of their referrals.[292] The pamphlet described the history of the syndicate and further pressed the idea that the syndicate was entrenched in the underworld of illicit activity. An abortion-related death in Washington also brought the syndicate further publicity. The woman had died at the hands of a traveling chiropractor and not one of the syndicate's own, but the news of a young, beautiful woman whose body was discovered in a river after having bled out from a "bungled abortion" only provided further incentive for prosecutors to charge members of the syndicate to the fullest extent of the law.[293] After twenty hours of deliberation, the jury found eleven of the Los Angeles PCAR defendants guilty.[294]

R.L. Rankin, no. 59548, Dept. of Consumer Affairs, Board of Medical Examiners Records, F3760:825, Abortion Investigation Files, California State Archives, Office of the Secretary of State, Sacramento, California.

In many respects, PCAR's success—namely its ability to provide safe, illegal abortions—contributed to its demise. In contrast to almost all the abortion prosecutions before this case,

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[292] Dr. Eric Wilson, *What a Racket!* in BME, F3760:823.

[293] Sullivan, The full list of those indicted: Reginald Rankin, Dr. George E. Watts, John A. Creeth, Joseph Shinn, Marvin Raithel, Dr. William Norman Powers, Dr. Valentine St. John, Dr. Harry L. Houston, Dr. James Beggs, Paul De Gaston, William Byrne, Dr. Lawrence Guibinni (also known as Victor Angelo), Dr. F. B. Smith, J.C. Perry, E. T. Patee, Violet Rankin, Violet Pellegrini, Leola Habel, Dr. Jesse Ross, Ruth Hanson, Viola Warner, Laura Miner, Josephine Follet, Nedra Arden (also Nedra Cordon), Grace Moore, Mary Wilson, Lillian Wilson, Gladys Korf, Bessie McCarthy, Beatrice Bole, and Zora McEwen. Of these, Nedra Arden, Paul De Gaston, Josephine Follet, Zora McEwen, Laura Miner, Dr. Powers, and Marvin Raithel testified against the others in exchange for immunity or a lighter sentence. Rather than face the trial, the aged Dr. Powers pled guilty to the charges.

[294] Rankin, Dr. Watts, Dr. Ross, Shinn, Byrne, Grace Moore, Dr. Beggs, and Lillian Wilson were found guilty of conspiracy and four counts each of performing an illegal abortion. Dr. St. John and John Creeth were found guilty of conspiracy and one count of abortion, and Violet Pellegrini was found guilty of conspiracy and two counts of abortion. Rankin, Byrne, and Drs. Beggs, Ross, and Watts were sentenced to ten to twenty-five years each in San Quentin. Dr. St. John was sentenced to four to ten years in San Quentin. The rest: Pellegrini, Wilson, Moore, Creeth, and Shinn were allowed to just file for probation. Dr. Powers, who had pled guilty, begged to just be put on probation, but was sentenced to six month in county jail and three years of probation. Some of the other defendants were tried in the San Francisco trial—Mary Wilson, Leola Habel, Dr. Houston, Ruth Hanson, Viola Warner, Bessie McCarthy, and Beatrice Bole. Of these, only Wilson and Habel were allowed to plead guilty to a misdemeanor for which they were just placed on probation. The remainder fled law enforcement, and prosecutor McMahon eventually dropped the remaining indictments for lack of evidence.

there were no fatalities. There were no women making dying declarations—at least not from the syndicate. Though there were women contemporaneously dying from crudely-performed abortions, these women were not receiving their abortions from this syndicate. The syndicate's abortions were the antithesis of the botched procedures that had become representative of criminal abortions. For once, news of these criminal abortions suggested that abortions could be safe. Unable to proselytize a guilty verdict through an abstract, deceased woman, prosecutors made an extra effort to suggest women's brokenness, to ask questions about fetal viability, to portray Rankin and the other defendants as evil, and to describe the actual abortion procedure with as much detail as possible.[295] Court reporters and newspaper journalists crowded the courtroom to get the latest details to publish in the *Los Angeles Times*.

When reporters wrote of the possibility of fetuses discarded in sewer lines or burned at the Polsen cottage; and when they relayed women's testimony about their late-term abortions and premature babies delivered with bruises and indented skulls, they dramatized the narrative and portrayed the syndicate as villainous and criminal.[296] The attorneys made little effort to ask these women why they attempted to procure abortions beyond asking if they had some kind of illness or defect that would render them incapable of bearing children—to which most women simply replied that they were tired or previously had difficult pregnancies. The attorneys did not ask these women whether they were struggling financially, had stable relationships with their

[295] Several stories ran in various newspapers about Rankin threatening potential witnesses. Most of these allegations surrounded the state witness Bernice Tieman, a 25-year-old nurse who worked for the syndicate. According to the *Reading Eagle*, the "comely brunette" was in police custody for protection because Rankin threatened to "get rid of" her. Fearing his reprisal, she temporarily fled before she "regained" her "courage and decided to testify" that she had witnessed the disposal of two babies delivered through abortion. "Criminal Syndicate Witness is Guarded," *Reading Eagle*, October 21, 1936, 2.

[296] Re: babies with bruises and indented skulls—Josephine Perat obtained a late-term abortion for reasons unspecified. She told Dr. Watts that she was approximately 5 months pregnant—probably in order to pay a lesser fee. She was a packed case. After she felt ill, she went to a nearby lying-in hospital where she went into labor and delivered a 3lb 8oz boy who died within 24 hours. According to Catherine Eisoff, the nurse who operated the hospital, Perat was likely seven to seven and a half months pregnant. The baby was born with an indentation on the left side of the skull and had dark blue, reddish blue discoloration on his head as well. Eisoff claimed she put the baby in an incubator, but it did not live.

partners, or whether they wanted to be parents at all. Few attorneys indulged these women in opportunities to explain themselves beyond the very specific questions they presented them, though some women did use the opportunity to state their own opinions and that they were appreciative of what Rankin and his doctors did for them. The male attorneys directed the narrative of the PCAR abortion story and attempted to dictate the way women retold their experiences of it, though there were some opportunities for women to clearly articulate that they wanted an abortion.

While Leslie Regan acknowledged that women did speak out about abortions, she states that they mostly did so privately within intimate spaces. However, the legislative process of criminalizing and penalizing abortion, in the context of a safe abortion mill and abortion specialization, forced women to speak out openly about their own abortions instead of having journalists write about them post mortem—years before the 1960s when Regan says that women finally began to speak openly and publicly about their abortions. From 1937 through the early 1950s, decreased mortality and increased surveillance pulled these women from their small, intimate groups and thrust them into the courtroom, and newspapers nationally. Unable to hide their names or faces—subpoenaed before the courts—these women acknowledged their complicity with, and desire to obtain abortions. These women claimed ownership over their bodies. Some were defiant on the stand. Others, deliberately vague and short. The only thing that was different was the arena in which women expressed these feelings. For a brief moment women had the opportunity to display that they acted in their own interests to seek and acquire abortions.

Writing about PCAR nearly a year later, Louis Blanchard Kaley attempted to communicate his interpretation of the syndicate and women's desire to acquire abortions

illegally.[297] Kaley claimed that it was easy for society to understand the desire of a young unmarried woman who, driven by shame or fear, sought to "escape degradation," but then asked his readers to consider whether it was in their interest to widen the scope of legal abortions.[298] Acknowledging possible backlash, Kaley claimed that while increased legal access to abortion might give license to greater degrees of sexual freedom, "the fact must be faced that it is…not simply the licentious who reap the fruits of unwanted pregnancy today."[299] Kaley claimed that for every unmarried girl seeking an abortion, there were eight to ten married women also in the waiting room. Citing statistics from the U.S. Department of Labor, Kaley stated that in a study of 7,500 maternal deaths conducted over a two-year period, 89% of women who died from abortion were married. These women, Kaley argued, did not want to increase their family size because they did not want to deprive the livelihoods of their existing children. If they "choose to destroy an unformed protoplasm jeopardizing the welfare of the already living…how can we then condemn them?"[300]

Kaley went beyond speaking of the grandiose behemoth that was the Pacific Coast Abortion Ring. Kaley scolded druggists for the open trade and sale of toxic and ineffective abortifacients. These unregulated and heterogeneous potions could pose more of a risk than a surgical abortion, for if a "reliable abortifacient drug existed, it would be used for therapeutic abortions."[301] And if abortifacient drugs fail, women seeking abortions must often resort to other methods—like violent falls or other physical injury to bring about miscarriage. As a result,

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[297] Louis Blanchard Kaley, "This Business of Abortion," *Forum and Century*, vol. 100, no. 1, July 1938, 34.
[298] Ibid.
[299] Ibid.
[300] Ibid., 35.
[301] Ibid.

abortion carried such a stigma as being a violent, dangerous procedure. In reality, it was a simple procedure. Yet, the simplicity of the procedure itself is what caused its potential danger.

Non-specialists, like Heddens, felt that with the right amount of rudimentary training they could perform the procedures themselves. This presumed straightforwardness of the procedure and the possibility for lucrative exploitation was attractive "not only [to] the unscrupulous skilled but to the incompetent failure, the midwife, and even the outright untrained quack eager for an easy dollar."[302] The real crime in abortion, Kaley lamented, was that adequate services were out of reach for most women who wanted to receive them. Legislation was not a "deterrent." It only made "desperate women easier prey for individuals totally without conscience or principle or ability."[303] While Kaley believed that abortion itself was "palpably wrong," he believed that liberalization of existing laws was the lesser of two evils. If women were able to get safe abortions more easily, the tangible result would be a reduction in the number of lives lost.

Kaley's discussion about the liberalization of abortion laws would come right before their increased repression and criminalization. Safer abortions had made convictions more difficult, but the *Rankin* case changed that. Because prosecutors were able to convict most of the defendants without a fatality, law enforcement else in California rode on the heels of their success. Since the prosecutors in the *Rankin* case were able to convict the defendants with live women, and without bodies, it meant that they had decreased the burden of proof that prosecutors needed to present. Kaley's voice—and the voices of the women who testified about their own abortions—would be some of the last heard before increased abortion surveillance in the 1940s and 1950s.[304] Kaley's invocatory plea to the public about liberalizing abortion laws

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[302] Ibid., 36.
[303] Ibid.
[304] Excluding the period during World War II, in which, in Los Angeles County for example, the percentage of abortion deaths fell drastically. This decrease could be attributed to the movement of the large number

counters arguments others have made about the period between criminalization and decriminalization as "the century of silence."[305]

The next chapter follows the years of increased restriction after the *Rankin* case. We revisit Laura Miner and Reginald Rankin as they separately went back to performing abortions in San Diego, and Reno, Nevada, respectively. As previously mentioned, the *Rankin* case was unique in that it convicted a majority of the syndicate members—even though there were no murder charges attached to the abortion chargers. This was a significant departure from the previous cases involving Galen Hickok, Henry Lee Mottard, Delphine Walsh, Vera Nelson, and Margaret Scott. Together, Miner and Rankin's abortion endeavors after PCAR illustrate decreased tolerance for illegal abortions, increased surveillance, restriction, and punishment. As illegal abortion providers felt a push back from law enforcement in the 1940s, they would modify their practices again in order to continue to serve their steady stream of clientele. Additionally, as more women realized the possibility of having to take the stand, the searched for other ways to avoid the hassle of police interference.

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of American men overseas and a decreased incidence of sexual relations on the home front. Similarly, it could also be because wartime industries reinvigorated American industry and created jobs and financial security for those who became pregnant.

[305] Luker, 40.

Chapter 6: Choice and Restriction: Surveillance, Repression, and Transborder Abortions……

> "Each experience leaves its imprint, some imprints are more like scars. But I can still hold my head up and I respect myself because my conscience is clear. I have helped humanity—someday it will be legal for a doctor to help a woman who will then have a right to decide for herself how many children she shall have, and when."
> —Laura Miner, Notes from Tehachapi, Wednesday night, May 15th, 1950.

The results of the *Rankin* ruling were tangible for providers of illegal abortion in Southern California—and the women seeking abortions. Because prosecutors were able to try this case and convict the defendants without a dead body abortion practices in California took a startlingly repressive turn. In this chapter, we will revisit Reginald Rankin and Laura Miner, whose arrests in the 1940s illustrate this newfound repression. At the same time, the ability for prosecutors to use women to testify against their abortionists proved to be a negative side effect of decreased mortality. After the *Rankin* case, crackdowns on abortion providers became much more productive and forced women and abortionists to resurvey their options.

Just months after the PCAR crackdown, police officers in San Francisco raided Inez Burns' abortion clinic.[306] The initial raid in 1936 did not result in formal charges. Burns' employees wouldn't speak, and—perhaps due to her trap doors and hidden compartments—they found no evidence. In 1938, her clinic was the focus of yet another raid—this time as a result of a confession from one of her patients. When police entered the building, they found ten patients recovering, but the women all denied they received abortions. Unable convince any of her patients to testify, the D.A. was able to muster together a tax evasion charge in 1939—which Burns promptly settled for $10,000. Running on a campaign to clean up the city, Pat Brown

[306] Inez Brown changed her name to Burns when she got married in 1932.

became the San Francisco District Attorney in 1943. With her name known in San Francisco, and after collective hours of surveillance on her clinic, Burns' fate was sealed when a tip in 1945 gave police just cause to raid her clinic yet again. Burns finally went to trial for abortion.[307] Burns' business was wildly successful. An abortionist in the blurry period immediately following the Rankin trial, her arrest and conviction were not certainties. In fact, had she stopped practicing abortion following her 1939 tax evasion charge, she would have escaped the period of increased restriction, surveillance, and repression. Instead, she continued to provide a service to women regardless of, perhaps even in spite of, of shifting political climate. This was her downfall, and she would not be alone.

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In an undercover investigation for the *San Diego Sun*, a woman reporter visited a number of abortionists in the area and painted a picture of what it was like trying to get an abortion in San Diego in the years after the *Rankin* case.[308] According to her report, prices for an abortion in San Diego ranged from $50-$100. A letter from a physician resulted in minimal obstacles for a woman who wanted an abortion. Providing the name of a friend or acquaintance who had an abortion by the same practitioner usually worked just as well. However, the investigator found that having no references or credentials often resulted in skepticism, hostile interrogation, even flat out refusal.

The *Sun*'s investigator gathered names and addresses of presumed abortionists from police, court, and medical association records and visited several as a prospective patient. In her investigation, she found that it was easier for a married woman to get an appointment than for a

[307] The first two trials, in 1945 and 1946 resulted in deadlocked juries. The third trial resulted in a guilty verdict for all the defendants. The five defendants (four women and one man) were each sentenced to two to five years in prison. After exhausting their appeals, the defendants were told to serve out their sentences.

[308] The investigator left names out of her exposé.

single woman. She also found that some offices were not clean or hygienic. Since abortionists operated their business outside of legitimate medicine, and because the procedures were illegal, most women probably thought they could not demand a professional, sanitary environment. The fact that abortions took place *outside* of hospitals perpetuated the illegitimacy of the procedures. In other cases, entrepreneurs catered to the upper classes. In the late 1930s, for example, the State BME received word of an abortion ring for the elite of San Diego that was operating in on the top floor of the El Cortez Hotel—the tallest and most glamorous hotel in San Diego.[309] As previously mentioned, the era after the successful of the PCAR defendants meant that death was no longer the only means by which law enforcement could bring about an arrest. Immediately after PCAR, providers of illegal abortion grew leery of providing services to women who came without an appropriate referral. Similarly, physicians who wanted to provide abortions for their patients increasingly turned to therapeutic abortion exceptions and any loopholes therein.

Though most abortion laws provided therapeutic exceptions to preserve the life of the mother, advances in medical technology had "made it extremely rare to find an illness in a pregnant woman that cannot be treated so that her pregnancy can be carried to natural completion without immediately endangering her life."[310] As a result, the therapeutic designation became increasingly amorphous. When Dr. Bourne, a respected obstetrician in England, performed an abortion on a "feeble-minded" fourteen-year-old rape victim, physicians in America followed the case intently to see how they handled this situation.[311]

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[309] Report #154 from W. N. Anderson, Acting Assistant Special Agent to the San Diego County Board of Medical Examiners of the State of California, June 22, 1937, BME, F3760:817.

[310] Loren G. Stern, "Abortion: Reform and the Law" *Journal of Criminal Law and Criminology*, vol 59, no 1 (1968), 87.

[311] Reports conflict on whether the rape victim was "feeble minded." Another report claimed that she was "normal and healthy." It isn't clear to me if the diagnosis of feeblemindedness was related to her rape and subsequent abortion (as some kind of marker of social deviance), or if it was deliberately mentioned for the defense in order to bolster the idea that the abortion was medically necessary to preserve her fragile mental health.

According to news and court reports, a 22-year-old Guardsman of the Royal Horse Guard raped a 14-year-old girl. She became pregnant and sought help that ultimately led her to the distinguished surgeon, Dr. Aleck William Bourne. Dr. Bourne performed the abortion free of charge, seeking the opportunity for a test case. The rape, for which David Evan Thomas was convicted, resulted in a sentence of four years. The possible sentence that Dr. Bourne faced for performing the abortion: life in prison.[312] Though the English statute did not even permit abortion when necessary to save the mother's life, Dr. Bourne believed that he was performing his job as a physician.[313] Dr. Bourne asserted "while the operation was not necessary to save the girl's life, it was justified for the sake of her mental condition and future."[314] Dr. Bourne would later say that he liked this case as a test case because it was an opportunity to bring therapeutic abortion to the fore when there was "no real danger to *life*…but one which one might very strongly suspect great danger to health."[315] Dr. Bourne was also keenly aware that his case would force a discussion of mental health as a justification for therapeutic abortion—one justification that most physicians were recalcitrant about accepting. This case, *Rex v. Bourne*, sparked an internal debate within the medical profession worldwide. The case was complicated. Few doctors wanted to seem like they supported motherhood at fourteen years of age—particularly since the pregnancy was a result of rape. Regardless, the core of the trial rested upon whether the prospect of a fourteen-year-old mother becoming a "mental wreck" was equivalent to preserving or saving her life. As a result, this case strengthened the use and validity of therapeutic abortions worldwide, while acknowledging that danger to *life* and danger to *health* were equally legitimate

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[312] "Noted Surgeon Challenges Law," *Los Angeles Times*, July 2, 1938, 7.

[313] "Criminal Law: Abortion, Preservation of Health as a Justification," *The University of Chicago Law Review*, vol. 6, no. 1 (Dec. 1938), 109.

[314] "Doctors Back Obstetrician," *Los Angeles Times*, July 19, 1938, 1.

[315] Aleck Bourne, "Correspondence: *Rex v. Bourne*, to the Editor of *The Lancet*," *The Lancet*, July 30, 1938, 280.

reasons for women to terminate pregnancies under the tenets of therapeutic abortion. When the court found Dr. Bourne not guilty, the liberalization of English abortion laws legitimized physician intervention in the otherwise sacred "process of procreation" globally, and forced American physicians to reevaluate the tenets of therapeutic abortions as they applied to *health*, not just *life*.[316]

By the 1930s, most States with abortion laws had therapeutic abortion exceptions. Since physicians typically practiced independently, it was acceptable for them to come to their own conclusions and perform the procedures for their private patients in the hospital. Therapeutic abortion exceptions were a valuable loophole for physicians and the women who could afford them. Legal loopholes in states' abortion laws existed in order to protect the lives of pregnant women in the event of legitimate medical conditions. However, the laws did not specify *what* constituted a bona fide medical condition, so this was left to the physicians' discretion. While there were ongoing debates over what justified a therapeutic abortion, they were relatively easy to obtain if you already had a private physician. Furthermore, considering the structure of these laws—requiring a visit to a physician (with hospital privileges), for a hospital procedure—native-born white women of financial means became the most typical recipients of therapeutic abortions. According to Leslie Reagan, the therapeutic abortion loophole not only allowed for abortions when a woman's life was seriously in danger, but it also allowed for a space wherein physicians and female patients could *negotiate* the terms of an abortion. Physicians' independence allowed for some flexibility in determining what justified a therapeutic abortion on medical or even *social and personal* grounds. Additionally, the fee-for-service component may have compelled some physicians to perform "therapeutic" abortions for non-therapeutic reasons in order to keep their patients' loyalty. For example, Leslie Reagan found that through the 1940s,

[316] "Criminal Law: Abortion, Preservation of Health as a Justification," 111.

"excessive" vomiting remained a justifiable (though hotly debated) reason for therapeutic abortions.

By the 1950s and 1960s, exploitation of the therapeutic abortion loophole led to the systemic control of therapeutic abortion by hospital committees of 3-5 physicians. Rather than allow physicians to continue to operate and practice independently, the *committee* determined whether an abortion was therapeutically necessary. If a woman went to her regular physician seeking an abortion, the legal method would have been for her physician to present the case before the hospital therapeutic abortion committee. The committee would deliberate and then return a decision. Under this new regime, "the rate of therapeutic abortions performed in hospitals declined dramatically."[317] County and state-level officials recorded the numbers of therapeutic abortions that came before the committee for approval and kept track of the numbers that were authorized. This led some hospitals to employ deliberate, yet unofficial, quotas in order to stay under the radar. Committee members, aware they were being watched, were particularly strict in their interpretations of what they considered acceptable reasons for therapeutic abortions for others physicians' patients since "clinic patients were competing for precious slots with the private patients" of the committee or hospitals supervisors.[318] So, just as the abortions of the early 20th century, money remained integral to acquiring a safe and/or legal abortions for some women.

The quota system left poor women who were seeking therapeutic abortions in a precarious position as well. Without a family physician acting as her advocate, a poor woman with a condition that permitted a therapeutic abortion was likely to be sterilized as well. Some physicians felt inclined to perform therapeutic abortions for eugenic, social, or economic

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[317] D'Emilio and Freedman, 253.

[318] Carol Joffe, *Doctors of Conscience: The Struggle to Provide Abortion Before and After* Roe vs. Wade (Boston: Beacon Press, 1995), 64.

reasons. During the Depression, the eugenics movement gave significance to these reasons and fortified physicians' convictions to use them. Stressed financial conditions put physicians in a position where they could minimize the number of social and financial burdens by means of abortion and sterilization. Because of the gray areas in therapeutic abortions, physicians frequently disagreed on the subject. Dr. J. Whitridge Williams, for example, offered his own practice up for critique when he spoke to students and faculty at the University of Washington on Indications for Therapeutic sterilization. Sterilization—linked to abortion and other forms of contraception—was the most extreme and irreversible methods of birth control. According to his own address, in his clinic, of 118 patients, he sterilized 15 for mental or psychiatric reasons and four for social reasons. In many of his cases, abortion was a by-product of the sterilization procedure (though Williams was clear to articulate that these procedures all occurred "prior to viability of the child").[319]

When the justifications for some of Dr. Williams' sterilizations were broken down, the causes for their sterilizations (and resulting abortions for seven of these patients) were feeblemindedness, dementia, psychosis, chorea, insanity, and depression. As for the social causes: syphilis, "general worthlessness," low mental age, and "a worthless husband."[320] Though not all of Dr. Williams' cases for sterilization involved abortion, they indicate the ethos framing physicians' reproductive decisions for their patients. These were the cases in which physicians felt justified tampering with women's ability to reproduce. Analyzing Dr. Williams' clinic, Dr. Charles Gordon argued that medical conditions for birth control—from contraception through sterilization—"are not universally accepted and wide divergence of views exist."[321] Dr. Gordon

[319] Charles A Gordon, "Abortion and Contraception for Indications Other than Purely Medical," *The American Journal of Surgery* vol. VIII, no. 3 (March 1930), 675.
[320] Ibid., 676.
[321] Ibid.

explained that depending on the conditions the women were claiming in order to procure contraception, the physician had to strike a balance between medicine and humanitarianism. Eugenic-based concerns about society and welfare may have compelled some physicians to sterilize or abort. If a woman's heredity suggested an abortion for *this* unborn child, why not for future children as well? Therefore, if a woman wanted an abortion, did not have a condition, and wanted to have children in the future, it was likely that her best chances were in the hands of an illegal abortion provider, and not with physicians of the party-line.

The providers of illegal abortions who continued practicing after the *Rankin* case faced a difficult challenge as well—adaptation for survival. Some of the *Rankin* defendants did not disappear after the trial. Abortion remained a lucrative practice that women continued to desire. For PCAR defendants Reginald Rankin and Laura Miner, the struggle after the *Rankin* case was in finding new ways to do the same business.

On May 10, 1940, Rankin was released on parole from San Quentin. Within months he was beginning a new racket in Reno, Nevada alongside Ruth Barnett.[322] Rankin was a little rusty. His new Reno syndicate was not as developed as PCAR had been. Furthermore, he hadn't taken the initial steps he had taken with PCAR—such as bribing law enforcement, or getting an inside ally in a local medical association. After a botched abortion nearly ended in a patient's death, Barnett confessed to the whole thing and her testimony was used to convict Rankin yet again.

In August 1941, Rankin went to trial in *The State of Nevada vs. Paul Cushing and R.L. Rankin*. According to Ruth Barnett, by July 1940, Rankin had already returned to San Francisco as a free man. He went to visit Ruth Barnett in Portland where he told her that he, Dr. Valentine St. John (from PCAR), and Paul Cushing (whose real name was Leslie Von Kempfeldt) were

[322] Ruth Barnett was introduced to the business of abortion after she, herself, had an abortion by none other than Dr. George E. Watts before PCAR.

planning to move their business to Reno. Rankin met Cushing while incarcerated in San Quentin. The two openly discussed beginning an abortion mill on the outside. Cushing had been released from San Quentin before Rankin and set out to lay the groundwork for their Reno venture by contacting former PCAR members.[323]

According to Barnett's testimony, Rankin claimed that St. John wanted to open a health resort and women's clinic at Steamboat Springs, and that Barnett could help them by buying stock and operating the clinic as a naturopath until St. John acquired his license to practice medicine in Nevada. Rankin and Barnett flew to Reno later that month. Rankin had contacted Norman Biltz, a real estate agent, and had found a suitable office in the Lyons building. Cushing went to Reno shortly thereafter and they signed the lease. After signing the lease, St. John informed Biltz that he had hoped to obtain a medical license to practice at his new office, but was worried because his degree was from a foreign university. St. John asked Biltz if he would be willing to vouch for him to the state medical board—which he did. St. John also managed to acquire a list of local physicians from Biltz. It was at this point that St. John explained that he wanted the list of local physicians so that he could determine if they needed his services. Biltz asked what the nature of their services were, and St. John frankly replied that they were in the business of abortions. Rankin ordered a remodeling of the office, and within a couple months, Rankin gave J.C. Perry (also from PCAR) money to furnish the clinic.

Things soon fell apart. St. John had trouble acquiring his Nevada license. Cushing, Rankin, and St. John urged Biltz to find a local physician who would be willing to post his name on the door, but the task proved more difficult than they anticipated. Barnett took charge of the office, but worried because there wasn't a licensed physicians' name on the door of the office. Barnett complained to Rankin, and in November 1940, Rankin and his son attempted to resolve

[323] Report, Re: Rankin, February 26, 1945, BME, F3760:825a.

the matter. Unable to negotiate with St. John, the Rankins went to Las Vegas, Nevada and met with an old friend, Dr. Z. A. D'Amours, a physician with a Nevada license. Rankin offered to pay Dr. D'Amours $50 to put his name on their door, a proposition to which Dr. D'Amours agreed. According to the investigation, D'Amours was never told to relocate to Reno, and only became aware of their illegal activity once the defendants were arrested.

On November 14, 1940, Bernardine Price went to the Lyons Building in Reno for the purpose of acquiring an illegal abortion. Price, a nurse and mother of one child, could not afford to have more children. Barnett informed Mrs. Price that she would be fine and that she had been performing abortions for decades. Barnett told price that if she were two months pregnant or less, the procedure would cost $50. If she were three months along or further, the procedure would cost $75. Price agreed to the conditions, left the office to borrow money, and returned later that afternoon. Barnett performed the abortion, and after about twenty minutes of rest, Price called a taxi to take her to work at Washoe General Hospital. Price worked all evening, but by the next day she had fallen ill. On Saturday, Price didn't go to work. She called a physician who determined she was suffering from a severe infection. The physician took Mrs. Price to Washoe General Hospital and performed a curettement. He observed that someone had performed an abortion on her recently. The physician contacted the hospital Chief of Staff who notified the authorities. Since Mrs. Price had no illnesses justifying an abortion, the police authorized the arrests of the defendants.[324] Barnett agreed to testify against the others as a witness for the State—her testimony resulted in their conviction. Rankin and Cushing appealed on the grounds

[324] The charge against the defendants: The defendants "did then and there willfully, unlawfully and feloniously use and employ a certain instrument, the exact nature of which said instrument is to this affiant as yet unknown, in and about and upon and within the body of one B. Price, the said B. Price being then and there a woman pregnant with child, as defendants then and there well knew, with intent thereby, then and there, to procure the miscarriage of her, the said B. Price, the use of said instrument as aforesaid not being then and there nor at all necessary to preserve the life of the said B. Price, or that of the child whereof she was pregnant." *The State of Nevada vs. Paul Cushing and R. L. Rankin*, No. 3343, Respondent's Answering Brief, August 22, 1941, Supreme Court of the State of Nevada.

that they were in California at the time and had not performed the abortion. However, Nevada law made no distinction. Since Barnett performed the abortion as part of Rankin and Cushing's organization, they were just as guilty.[325] Rankin was released from Nevada State Prison on May 3, 1943, and he was back in California by December. He likely returned to Southern California because he felt more comfortable there. However, upon his return to the Golden State, Rankin wasted no time. According to State BME reports, they suspected that Rankin was borrowing money from former PCAR associates, asked other doctors to turn over their offices to him for abortion business, and asked other doctors to refer their abortion cases to the Cottage Hospital in Tijuana, Mexico—all of which the BME had little other evidence to corroborate.[326] Ultimately, Rankin's decision to rush into a syndicate similar to PCAR was his failure. While the group faced difficulty in properly setting up their clinic, their problem was the clinic model itself. Abortion clinics were too visible for illegal abortions to take place there. The era of the stand alone clinic had past. Rankin now knew it, and Laura Miner would soon find out.

Laura's Chiropractic College graduation photo, Courtesy of Linda Heisig and Robin Beers.

Even though Laura Miner performed nearly all of the abortions in PCAR's San Diego office, Rankin only listed her as a nurse in their own internal roster. When she returned home from testifying for the prosecution in the *Rankin* case, she moved herself and her children to Los

[325] Dr. Valentine St. John jumped bail and was a wanted fugitive.
[326] Report, Re: Rankin, February 26, 1945, BME, F3760:825a.

Angeles so that she could finish Chiropractic College.[327] She received her degree and license in the summer of 1938 and returned to San Diego where she resumed business as usual. Laura opened her own office on 5th Avenue. She would frequent the local soda fountain and read her paper at the counter. If someone needed her services, they were to go to the counter and ask for her there. She would briefly speak to them before sending them to her office. Depending on the referral, Laura would have the women come directly to the clinic, or would have someone pick them up and drop them off without disclosing the location. After PCAR, if abortionists did not trust the referrals, they would sometimes have one of their steerers pick up the patient from a designated location—frequently a large grocery or department store parking lot. From that designated location, the steerer would drive the patient around, sometimes blindfolded, to disorient her before eventually arriving at the clinic. When, for example, Fran Johns needed to get her illegal abortion, she waited patiently in front of a movie theater for the person who was supposed to pick her up. When the black Buick pulled up to the theater, the driver sped off as soon as she got in the car. He handed her a bandana and told her to cover her eyes before asking her if she had her money. The man drove around for twenty minutes through busy streets, neighborhood blocks, and empty fields before finally pulling up to a carport of a small house.[328]

As an independent business owner, Laura had some flexibility. She scaled her prices according to a client's ability to pay—having wealthier women pay a little more to help those

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[327] Before Laura and her children moved to Los Angeles, she was in the spotlight following an operation upon Mrs. Lauretta Hazel Reese. Miner was held on $1000 bail for the procedure Mrs. Reese was not expected to survive. According to Mrs. Hazel's dying declaration, the procedure occurred on April 16, 1937 in Miner's home. It is unsure what happened after the procedure, but Mrs. Hazel ended up at the County Hospital where she received multiple blood transfusions. A week after her procedure, and after her second blood transfusion, it appeared her condition was improving; however, by April 29th, Mrs. Reese had passed away. Before Mrs. Reese had died, the police escorted Miner to Reese's deathbed where the police stated Reese positively identified her. Though police were aware of her previous involvement in PCAR, and despite pressure to charge Miner with murder, it does not appear that she served any time for Mrs. Reese's death and she does not mention it in the her own documents that I've seen.

[328] Fran Moreland Johns, *Perilous Times: An Inside Look at Abortion Before—and After*—Roe vs. Wade (New York: YBK Publishers, 2013), 8-9.

who couldn't afford the procedure. She sometimes performed abortions upfront for women with no money, or she sometimes took furs and jewelry in lieu of money for wealthier clients who could tell their husbands, boyfriends, lovers, or fathers that the item was lost or stolen. Laura was proud of being able to help women get out of trouble and avoid the life that her own mother experienced. She truly believed that women had the right to choose whether they wanted a baby. Laura was a careful practitioner, and even though there was a hospital just a few minutes from her office, she never had any complications. Miner was proficient and well known in the industry. Some famous ladies from Hollywood even made their way to Miner's office in order to avoid the prying eyes of the industry. One of Miner's standing appointments—a woman named Florence Chadwick—would visit every three months because she trusted Miner more than the unreliable methods of birth control available.[329] In San Diego, Miner's business was an open secret. She served a long list of politically important people who utilized her services and were not interested in shutting her down. Laura kept this office until April or May 1944.

She closed her office and sold her equipment. She didn't work for two years. Her children were off in boarding school and she sold her large home in order to fix up a smaller one. When her kids came back home and around September 1946, Laura went back to work part-time at a new suite of offices at the Hillcrest branch Security Bank Building on the corner of 5th and University. Though Laura claimed that some of her work was legitimate chiropractic work, the vast majority of her money came from illegal abortions. Rumor has it that when the pregnant secretary/mistress of one of the married district attorneys required an abortion, the secretary told her lover an inflated price in order to pocket some of the money for herself. His outrage at the price brought about Laura's fall.

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[329] Chadwick, born in San Diego, would become famous for being the first woman to swim the English Channel in both directions.

In late September 1948, the DA raided Laura's office and put her and her two associates—Dr. Josephine Page and their assistant Nedra Cordon—under arrest. On trial, the DA's subpoenaed a number of women who had abortions in Laura's clinic. Under examination, women were forced to divulge intimate details about the procedures, while clueless husbands looked on. Prosecutors asked women about the positions they assumed on the table for the procedure, if they were naked, draped, if they felt speculums being inserted into their vaginas, if they didn't know what speculums were, the male DA had to explain. The unrelenting attorneys pushed the women until they broke. When Mrs. Grace Peterson took the stand to speak about her abortion in September, she burst into tears, "I told you I had it done. Isn't that enough?"[330]

The young woman who said she visited an alleged abortionist hides her face with her bag after testifying in court.

Richard K. Hotschall, "Young Mother Names Dr. Miner in Alleged Abortion Case Trial," Newspaper Unknown, February 22, 1949, Laura Miner's Collection of Newspaper Clippings, Courtesy of Linda Heisig and Robin Beers.

On the stand, many of the women relayed similar reasons for wanting an abortion. Some said they were weak or ill. Mrs. Elizabeth Potter already had a number of children and was concerned about her age. The women also expressed similar experiences at the office. Some women had their husbands drop them off, while others went alone or met a liaison to transport them. Once they arrived, Nedra greeted them, asked what they were in for, collected medical history, date of last menstrual period, and the fee after confirming they still wanted an abortion. Sometimes the patients were taken to the back right away. In other instances, they had to leave and return at another hour.

[330] *The People of the State of California vs. Laura K. Miner, Josephine M. Page, and Nedra Cordon*, no. 149586, Reporter's Transcript, filed Nov. 10, 1948, 67, courtesy of Robin Beers and Linda Heisig.

When it was time, the women were taken into a room where they undressed. From there, they were escorted to the operating room where Nedra would help them onto a table and drape them. Once that was done, the nurse would call in the doctor—either Laura Miner or Josephine Page—to perform the procedure. The doctor would insert a speculum to dilate the cervix. Then, the doctors would perform a standard curetment followed by water suction. The women frequently described a dull pain or cramping during the procedure. After that, the nurse or doctor would instruct the women to lie down for about 10-15 minutes. Most felt well enough after the 10-15 minutes to continue with their normal routine. If the women did not have rides home, the office would call for a taxi to transport them. Finally, the office would schedule a follow up procedure for a few days, up to a week, later to make sure everything was fine and that the procedure had been successful.[331] In the follow-up procedure, one of the doctors would essentially perform the same operation as had been done previously to ensure that no material had been left behind. This would also prevent the likelihood of infection resulting from residual material.

The jury convicted Laura and she spent nearly two years at the California Institution for Women at Tehachapi. After her release, she never performed abortions again. While Laura had attempted to modify some her practices after PCAR, her case reflects how prosecutors were able to successfully convict abortionists without patient deaths or complications. Any evidence collected from raids—speculums, patient cards with women's names on them, an operating table, and a curette were sufficient evidence to convict abortion providers. Arrest warrants for raids also resulted from hours of surveillance of the clinic—watching who entered and exited. Investigators' notes detailed when women entered and existed the clinics, the license plates of the cars that dropped them off, what the women looked like, as well as how they assessed their

[331] Ibid.

conditions to be once they left.[332] While the court could technically convict the patients as well, this rarely happened. Prosecutors frequently convinced the women that they *would* be convicted if they *did not* testify against their abortionist. Pressure from police investigators, prosecutors, or personal naivety compelled these women to take the stand and describe their abortion experiences in detail. These cases represent the outcome of the *Rankin* case. Surveilled abortionists and patients endured law-enforcement's encroachment into the very intimate details of their personal lives. Rather than tolerate invasive lines of questioning after what many women probably felt to be an invasive abortion, many women chose another route to escape the torment and shame brought on by a case.

[332] "Monday-October 25th, 1948—operative on location… At 8:25 a.m. a gray two door sedan Dodge California License No. 77-V-301, drove up to this location and parked at the curb. A woman driver about 40 yrs. of age, 5'7", 120 lbs. buxom, Brunette, wearing a green dress and tan coat, black leather gloves; got out and entered this residence. At 10:15 a.m. a two-tone (Gray-Black) 1948 Buick four door sedan, California License No. 2-S-3653 drove up at this address headed the wrong way, parked and two women got out and entered this residence. No. 1 woman the driver, in her twenties, 5'7" 110 lbs. wearing slacks; No. 2 woman, 45 yrs. 5'6", 128 lbs. wearing light dress and coat, they remained therein until 10:40 a.m. when both came out entered car and drove north…" From Confidential Report, Re: Miner Case, Operative J-9, courtesy of Linda Heisig and Robin Beers.

Table 2

FISCAL YEAR	TOTAL # OF CORONER CASES	# OF ABORTION CASES	SELF-INDUCED	BY PHYSICIAN OR MED PROF*	OTHER	AGE: 10-20; 20-45	STATUS
1938-1939	6190	19	10	2	1 criminal by unknown person; 2 spontaneous; 1 caused by fall; 3 criminal or self-induced, undetermined	1:18	15 married; 2 divorced; 2 single
1939-1940	6282	22	6	5 (4 criminal, 1 therapeutic)	1 criminal by unknown person; 2 criminal by known person; 1 spontaneous; 3 self-induced or criminal, undetermined, 1 self-induced or spontaneous, undetermined, 1 attempted abortion; 1 self-induced or accidental; 1 incomplete abortion	3:19	15 married; 2 divorced; 4 single; 1 widowed
1940-1941	6606	12	6	1	1 criminal by unknown person; 2 self-induced or criminal, undetermined; 1 incomplete abortion; 1 unknown cause	3:09	6 married; 1 divorced; 5 single
1941-1942	6760	19	4	5	1 accidental, due to fall; 2 spontaneous; 1 therapeutic; 6 unknown cause, criminal or self-induced, undetermined	4:15	16 married; 1 divorced; 2 single
1942-1943	6831	23	9	3	1 criminal by unknown person; 2 spontaneous; 4 undetermined whether criminal or self-induced; 4 unknown cause	3:19, 1 unknown	21 married; 1 single; 1 widowed
1943-1944	6889	26	8	5 (4 criminal by physician; 1 justifiable by doctor)	2 criminal by unknown person; 6 undetermined whether criminal or self-induced; 3 unknown; 1 accidental due to fall; 1 induced by heavy lifting	1:25	22 married; 4 single
1944-1945	7715	10	2	3	5 unknown	3:07	7 married; 3 single
1945-1946	7862	12	4	1	3 criminal by unknown person; 3 spontaneous; 1 criminal or self-induced undetermined	1:11	9 married; 3 single
1946-1947	7469	11	6	N/A	1 criminal by known person; 1 criminal by unknown person; 3 unknown	5:06	7 married; 1 divorced; 2 single; 1 widowed
1947-1948	7789	8	4	N/A	1 criminal by known person; 1 criminal by unknown person; 3 unknown	1:07	6 married; 2 single
1948-1949	7539	11	5	N/A	2 criminal by known person; 1 spontaneous; 2 unknown	3:07	4 married; 1 divorced; 3 single; 1 widowed; 1 unknown
1949-1950	7770	6	3	N/A	1 criminal by known person; 2 unknown	0:06	5 married; 1 single
1950-1951	7774	6	1	1	1 criminal by known person; 1 undetermined, self-induced or criminal	0:04	4 married
1951-1952	8134	15	7	1	3 criminal by known person; 1 criminal by unknown person; 2 criminal or self-induced; 1 spontaneous	0:15	7 married; 6 single; 2 divorced
1952-1953	8534	13	8	1	4 criminal by known person	3:10	7 married; 3 single; 3 divorced
1953-1954	8539	11	8	N/A	2 criminal by known person, 1 criminal or self-induced, undetermined	0:11	8 married, 3 single

In the years after the PCAR trial, Los Angeles saw a decrease in abortion-related deaths. Most likely, this decrease was a result of less women attempting to procure abortions in the new, stricter environment—and not because abortions were necessarily any safer than they already were. While therapeutic abortions offered an opportunity through which some women could legally acquire an abortion, it strictly circumscribed what constituted a legal abortion. According to data from the Los Angeles County Coroner's office, there were 224 abortion deaths in Los Angeles County from July 1, 1938 through June 30, 1954. This number, 224 over fifteen fiscal years is less than the 278 abortion deaths the coroner's office handled in the eleven fiscal years prior. The 224 abortion deaths performed from 1938 through 1954 also represented an insignificant percent of the growing number of cases that the coroner's office handled in that same time —which was more than double the number of cases from the eleven years prior.[333] Abortions represented .189% of the total cases handled by the Coroner's office from 1938 though 1954. Much less than the .514% that abortions represented from 1927 through 1938. The statistics from 1938-1954 also represent a shift in causes of abortion.

The percent of abortion deaths caused by a physician or other medical professional actually increased from 10.79% to 13.15%, a possible result of more women seeking therapeutic abortions. The percent of abortion deaths from "other" causes increased from 36.69% to 45.5%. Significantly, while self-induced abortions represented a majority of causes of death from 1927 through 1938 (52.52%), that percent dropped from 1938 through 1954 (40.6%). Possible explanations could be that women were taking advantage of therapeutic designations, seeing specialized, illegal abortionist, did not wait as long to see a doctor if they experienced complications, decided to resign themselves to an unwanted pregnancy. Though married women

[333] From July 1, 1927 through July 1, 1937, the Los Angeles County Coroner handled 54,078 cases. From July 1, 1938 through July 1, 1953 the Los Angeles County Coroner handled 110,114 cases.

continued to remain the group with the highest abortion rates—71.4% for the data from 1938-1954—the number of single women seeking abortions did rise from 13.9% of abortion victims in the early data to just under 20% in the data from 1938-1954. The decline in the percent of married women could be represented in the increasing percent of divorced women who died from abortions. It could also be linked to post-war economic success and the baby-boom era. Likewise, the increase in single-women who died form abortion could be related to changing dating patterns, boyfriends leaving to fight in World War II, or new relationships resulting in migration for war-time jobs.[334]

Meg Gillette and Rickee Solinger have pointed out that an increase in the number of "white illegitimate pregnancies" in the 1940s and 1950s forced medical and social work professionals to reevaluate their stances and perceptions of illegitimate pregnancy. While non-whites' tendency towards disorganized families could be attributed to their racial difference, they attributed single white women's illegitimate pregnancies to "psychological neuroses…"[335] They believed that "…with the right psychological treatment, [these women] could potentially prevail over past mistakes and resume the roles of normative young womanhood."[336] Part of this rehabilitation required giving up the baby.[337] According to Ann Fesler, the rate of premarital pregnancies in the United States increased substantially. By the mid-1950s, approximately 40% of first-births born to girls aged fifteen to nineteen were conceived out of wedlock.[338] Ideologies about sexual propriety did not change with shifting norms—particularly for middle-class

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[334] Data for divorced women through 1938 is 3%. The rate of divorced abortion victims from 1938-1954 was nearly double.

[335] Gillette, 137.

[336] Ibid.

[337] According to Alexandra Minna Stern, the postwar "revision of eugenics" opened up the door for "various psychogenic and psychoanalytic explanations of human development and deviance." See Stern, *Eugenic Nation*, 152.

[338] Dating patterns, the end of World War II, and the G.I. bill had also dramatically lowered the average age of marriage in the post-war period. Ann Fessler, *The Girls Who Went Away: The Hidden History of Women who Surrendered Children for Adoption in the Decades before* Roe v. Wade (New York: The Penguin Press, 2006), 29.

families—and society continued to stigmatize unwed mothers and their illegitimate children. Some young couples married quickly after discovering they were pregnant in order to cover their illegitimate births. But many young girls had their options dictated to them. Mothers, religious leaders, and social workers told these young women what was best for them and made arrangements for them on their behalf. Many of these young women believed "they were in no position to object since they had already brought shame upon the family by becoming pregnant."[339]

When the Board of Medical Examiners interrogated Mr. and Mrs. Jameson about their daughter, Shirley's 1939 abortion in their investigation of a Long Beach abortionist, they offered their full cooperation with one exception. They requested that the Board wait until August to interrogate their daughter. After her abortion, Shirley was "subject to a certain nervous strain which resulted in her being placed in a home."[340] She eventually recovered, and was engaged to be married to "a very reputable young man" that June.[341] Her parents believed that she would be more likely to speak to them after she had been married for some time. Similarly, when the Board interviewed Mrs. Raymond about her 19-year-old daughter, Mary, she gave a similar account.[342] According to Mrs. Raymond, Mary was engaged to a promising young man. While he was away in college, Mary went out and became pregnant by a "goon." After contacting friends, physicians, acquaintances, and the family doctor with no success, Mrs. Raymond drove Mary down to Mexicali in hopes of finding an abortionist. Eventually, Mrs. Raymond found an abortionist in Ensenada. Mary and Mrs. Raymond followed the instructions and Mary had her

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[339] Fessler, 103.

[340] Names have been changed. Letter from Special Agent W. N. Anderson to C.B. Pinkham, May 24, 1940, BME, F3760:817a.

[341] Letter from Special Agent W.N. Anderson to C.B. Pinkham, BME, F3760:817a.

[342] Names have been changed. Report on Alleged International Abortion Ring, California Department of Justice Bureau of Criminal Identification and Investigation Report, March 14, 1962, BME, F3760:821.

abortion. Mrs. Raymond "stated that she was not sorry that she had Mary aborted and would do it again if it became necessary. She felt that by having the abortion she saved Mary from becoming a social outcast, preserved her engagement to a promising young man, and might possibly have saved Mary's life as Mary was so depressed that she mentioned suicide."[343] Post-War conditions and increased middle-class conservativism may have also played a role in the reduction of the number of women who sought, or died, from abortions and instead fostered an increase in lying-in homes and adoptions.[344] The "ideological contours" of the Cold War—specifically containment—worked to constrain not only international relations, but gender and family relations as well. In the U.S., "fighting Communism abroad and shoring up internal security at home was linked to the idealization of motherhood and reproduction and to the sexual regulation of women's bodies."[345] As a result, women's bodies, once more, represented more than just bodies. Whether or not women liked it, their bodies were mobilized and given meaning by national ideologies.

One doctor bemoaned the plummeting morals of society and the effects this had on the medical profession. He expressed concern not only for the life of the mother, but for the unborn child as well. He continued,

> If adequate reasons for contraception include general debility, general malaise may be added… Once other than purely medical factors are allowed to count, no line can be drawn between therapeutic and criminal abortion… The physician is not the dispenser of life and death. He is not the arbiter of the universe. Individual cases may evoke his pity and wring his heart, but he should feel no call to redress all the wrongs and cure all the wrongs and cure all the ills of society… 'Have we the right to interfere with a normal pregnancy?' My answer is 'No.'[346]

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[343] Names have been changed. Report on Alleged International Abortion Ring, California Department of Justice Bureau of Criminal Identification and Investigation Report, March 14, 1962, BME, F3760:821.

[344] Fessler,

[345] Stern, 166.

[346] Charles A. Gordon, "Abortion and Contraception: For Indications Other Than Purely Medical," *The American Journal of Surgery*, vol. 8, no. 3 (March 1930), 678.

Other views were more moderate. Dr. Violet Russell argued that most women who wanted abortions did not feel that the procedure was wrong. Dr. Russell argued that if the State really wanted to do away with the "sinister atmosphere surrounding the present-day illicit abortion—the knitting needle, the crochet hook, the syringe, the shady doctor, and the dirty old woman; in the background, possible blackmail, injury, death"—it needed to provide women with alternatives. Specifically, Dr. Russell believed that if the State wanted to compel women to bear children, it needed to offer them family allowances or more information on contraception.[347] Dr. Russell especially felt that women should have the option to abort after they had already had about five children. She believed that legal abortion should be an alternative, but that there should be a widespread knowledge of contraception first. Dr. Russell also suggested that in instances where the mother's physical *and mental* state were at risk, she should be allowed to abort, and the physician should perform a sterilization for the most serious cases.

Adding to Dr. Russell, Dr. Joan Malleson argued that an increase in restrictive abortion measures would result in greater mortality.[348] Drs. Russell and Malleson seemed to recognize that women would continue to procure abortions—regardless of how the medical profession regarded them.

> I have come to believe that there may be certain situations in a woman's life in which nothing will deter her from seeking abortion; to increase restrictive measures is absolutely futile, for she is prepared literally to face death rather than carry on with the pregnancy…Whether we pity the desperate woman or whether we dislike her…we as medicals have… [taken] a very strange attitude towards her. In every other aspect of our work, it is our privilege to save life and maintain health and happiness. Yet, when a woman in deepest distress asks our help, we shelter behind the archaic habits of society; when she is ill and dying, we set about repairs and collecting statistics… Many people dislike the thought of destroying the early fetus, but we have certainly to realize that most women do

[347] Russell and Malleson, 102.

[348] Dr. Joan Malleson was actually the initial doctor who the pregnant rape victim in the Bourne case asked for help. Dr. Malleson wrote Dr. Bourne while simultaneously gaining contacting others in the medical community to support the abortion.

not value the early fetus as if it were a child.[349]

Dr. Malleson recognized that increased abortion restriction and reporting would simply result in an influx of self-induced abortions—which would be even more dangerous. Dr. Malleson defended abortion specialists because women were better off *with* access to medically qualified professionals. Dr. Malleson equated increased abortion restriction with disaster. Drs. Russell and Malleson seemed to understand that many women sought abortions on economic grounds and were quick to state that just because a women was seeking an abortion did not mean that she was a bad woman or mother. Perhaps in an effort to make the idea of abortion *less* deviant, Drs. Malleson and Russell argued that women who wanted abortions cared very much for their *existing* children and wanted to make sure that a future child did not jeopardize their opportunities or livelihoods. They demanded liberalization of existing abortion laws.

In 1959, The American Law Institute made a sweeping effort to standardize America's abortion laws. In light of California's amorphous antiabortion statute, the ALI's goal of standardizing American abortion law was laudable. The ALI, an independent organization comprised on various legal scholars, molded the law upon the bases "which most legislators have accepted" abortions.[350] These categories included: (1) when the life or health of the mother—mental or physical— was in danger; (2) if the possibility existed under sound medical judgment that the child would be born with a serious congenital deformity; (3) if the pregnant girl was very young, or if the pregnancy was a result of rape or incest. While this model law was an expansion of abortion rights for women in some states, the makers of the model law believed that the problem with existing abortion laws was not that they were too restrictive, but, rather, they were too lax and indeterminate.

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[349] Russell and Malleson.

[350] Keith P. Russell and Edwin W. Jackson, "Therapeutic Abortions in California," *American Journal of Obstetrics and Gynecology*, vol. 105, no. 5 (1969), 758.

Despite adopting the model law, courts still ruled differently depending on who performed the abortion. In the case of *People vs. Ballard* (1959), the court seemed to double "over backwards to let a doctor go" even though the case had "all the earmarks of a criminal abortion."[351] Since the physician was reputable and well-respected in his community, the court instead focused on the lack of clarity in the law; stating at the outset "a great deal of misunderstanding would be avoided in abortion matters if they were considered in the light of the fact that an abortion is not necessarily, in and of itself, an illegal procedure or act. In other words, not all abortions are illegal."[352] In California, efforts to delineate the parameters of legal abortion were stifled by the differing opinions of those defining and defending the law.

In San Diego in 1962, the Assembly's Committee on Criminal Procedure gathered for a hearing on AB 2614. The bill held that abortions could be performed in hospitals if their respective therapeutic abortion committees determined "the continuance of pregnancy involves substantial risk that the mother of the child will suffer grave and irremediable impairment of physical or mental health of if the pregnancy resulted from rape or incest."[353] Recognizing the ambiguity in the existing law, which held that abortions were only legal to save the life of the mother, this hearing attempted to determine whether this bill would clear up the legal criterion defining legal abortion.

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[351] Assembly Interim Committee on Criminal Procedure, Abortion Hearing, AB 2614, John A. O'Connell, Chairman, December 17-18, 1962, San Diego, California.

[352] *People v. Francis Edgar Ballard*, 167 Cal.App.2d 803 (1959), Crim. No. 6222, California Court of Appeals. Second Dist., Div. On. February 13, 1959.

[353] Abortion Hearing, AB 2614.

Table 3

Fiscal Year	Total # of Coroner Cases	Number of Abortion Cases
1954-1955	8634	14
1955-1956	9450	11
1956-1957	9584	18
1957-1958	9959	8
1958-1959	9950	11
1959-1960	10,786	10
1960-1961	10,825	17
1961-1962	12,073	13
1962-1963	12,516	15
1963-1964	12,642	7
1964-1965	12,670	7
1965-1966	13,128	5
1966-1967	12,387	3
1967-1968	13,781	1
1968-1969	*	*
1969-1970	14,035	4 mothers and 1 fetus

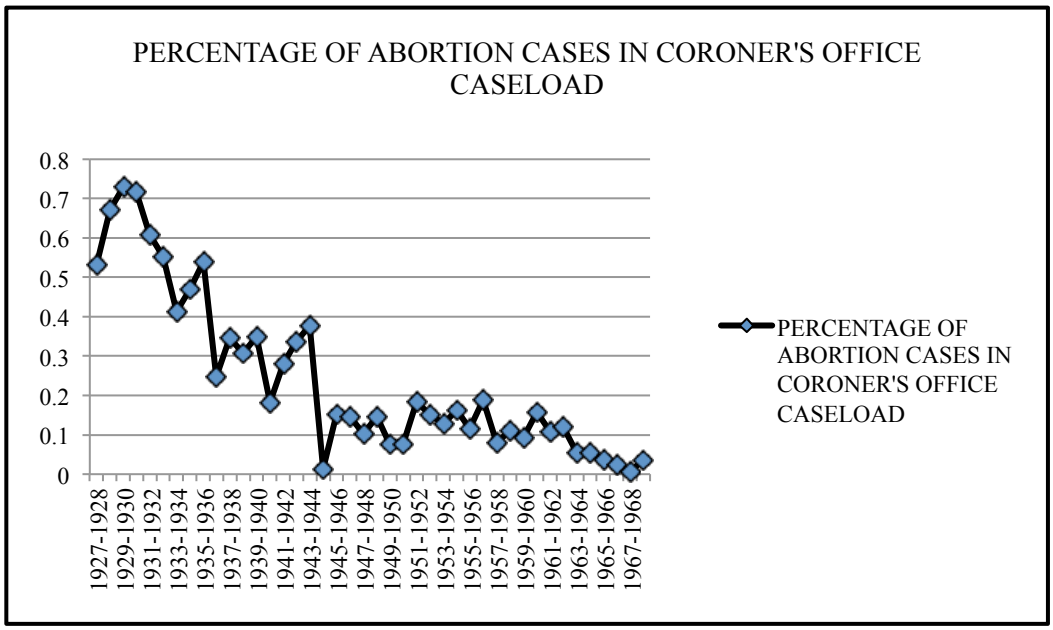
At the time of the San Diego hearing, medical experts in the United States believed that the number of abortions performed in the country ranged between 375,000 and two million per year—with one million being a conservative figure. Additionally, they estimated around 5,000 deaths per year as a result of poorly-performed abortions. In Los Angeles County, abortions continued to remain a decreasingly significant portion of the Coroner's caseload.[354] In the fifteen

[354] In the July 1, 1956-June 30, 1957 fiscal year, the Coroner's Office reorganized and altered its reports. Instead of detailed accounts and numbers, the reports became biennial and only provided selected statistics. Though they continued to provide the number of abortions, they ceased to list abortionist categories, marital statuses, and age. They continued to use this limited approach to compiling data until the July 1, 1969- June 30, 1970 report in which they, for the first time, specifically listed racial and ethnic data and a fetal death. In reference to the asterisk, there is an issue with dates in the July 1, 1967-June 30, 1969 Coroner's biennial report, so I did not include the numbers because they appeared to be an accidental reprint.

fiscal years from 1954-1970, abortions represented an average of .09% of the total number of coroner cases with a high of .188% and a low of .007%. The percentage of abortion deaths represented in the Los Angeles County Coroner's Office had steadily and consistently declined since the 1920s and 1930s. Yet, abortion was increasing in concern and public discourse. According to Kristin Luker, efforts to standardize the existing abortion law generated greater publicity for abortion and brought abortion into the public purview. As abortion became increasingly legislated and moved from the home to the hospital, "with the involvement of other people, widely varying interpretations of when an abortion is justified came into public view. The more public abortions became, the more opportunities for conflict arose."[355] Furthermore, the baby boom granted new credence to motherhood—World War II had ruptured existing gender norms and the return of men from war signaled a necessary return of women to the home. Abortion and maternal mortality became important figures in representing America as a modern nation. It did not matter that maternal mortality had decreased. The potential lives of fetuses had gained new meaning, and the shocking deaths of the women who did die threatened to ruin the reputation of the United States as a nation of modern, technological advancement.

[355] Luker, 58.

Figure 1



According to Mr. Zad Leavy, a Beverly Hills attorney who formerly worked with the Los Angeles D.A., and a witness for the San Diego abortion hearing, it was impossible to disregard the stereotype of married women who ended up in hospitals as a result of falling down the stairs and *spontaneously* aborting. Mr. Leavy claimed that the real suffering was "a result of women going outside the medical profession for help" because of their utter "disregard of the law."[356] In many cases, however, it wasn't utter "disregard of the law" that compelled women to pursue potentially dangerous, illegal abortions. Some women used abortions as means of navigating complex relationships in which they had limited agency. When Barbara Jackson discovered she was pregnant again, the college student was unsure of what to do. She already had a child from her ex husband from whom she received $150 per month. She and her boyfriend discussed their options. At first, they considered getting married quickly, but felt that "the possibility existed that if she had a child either out of wedlock or 6 months after the marriage, this would give the father of her 3 year old child some power to find her an unfit mother and take the child away

[356] Abortion Hearing, AB 2614.

from her."[357] Sometimes, women chose to have abortions because they were in unhappy marriages and did not want to bring another child into the mix. One 19-year-old woman sought an abortion because she and her husband were having marital trouble and had separated on many occasions. They already had a 14-month-old child. In other cases, estranged husbands reported their wives' abortions, or intentions to abort, to authorities as a means of control, in an attempt shame them, or exact revenge for their leaving.

The model law did not reflect an understanding of this, and still left the matter of women's choice out of the equation. As previously stated, advances in medical technology made it increasingly rare for a disease to preclude a woman who wanted to have children from having them. Thus, women who wanted to abort otherwise healthy babies became villains—unless their desire for having an abortion fell within certain parameters. While San Diego lawmakers argued that society generally felt sympathy and disgusted at the thought of an aborted fetus, "the scale begins to tip" towards the mother if we consider she was young, raped, a victim of incest, or "in a serious mental state."[358]

Despite legislators' best attempts to leave interpretation *out* of abortion law, the thalidomide tragedy and "the occurrence of rubella outbreaks with a certain consequence of damaged newborn infants" complicated the abortion issue.[359] As Americans watched the Thalidomide tragedy unfold in Europe, they witnessed the death and deformation of thousands of babies. While Americans did not experience an outbreak on the scale of Europe, it was enough to produce "anxiety about pregnancy."[360] The rubella, or German measles, epidemic of 1963-1965

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[357] Names have been changed. County of Santa Clara District Attorney Investigator's Report, December 21, 1960, BME, F3760:821.

[358] Abortion Hearing, AB 2614.

[359] Russell and Jackson, 758.

[360] Reagan, *Dangerous Pregnancies: Mothers, Disabilities, and Abortion in Modern America* (Berkeley: University of California Press, 2012), 56.

was particularly significant in changing public perceptions and law in regard to abortion.[361] While rubella only caused a minor rash and fever in women, it had particularly catastrophic effects if the women were pregnant. Rubella could cause miscarriages, infant deaths, or defects like mental retardation, blindness, deafness, and heart malformations.[362] There was no cure for rubella, so pregnant women who acquired the disease faced a difficult decision. Since rubella was not a diseased that posed an imminent threat to the *mother*, it was up to doctors and committees to determine whether the *specter* of fetal maladies was enough to justify a therapeutic abortion.

Physicians were not in agreement over whether the disease justified abortion. As a result, hospitals and therapeutic abortion committees were uneven in their application of California's abortion statute to rubella patients. One investigation of several hospitals in the Bay Area found that three performed therapeutic abortions following rubella diagnoses in the first trimester. Another three performed therapeutic abortions following rubella diagnoses for psychiatric reasons—particularly suicidal tendencies. Another would allow therapeutic abortions for rubella diagnoses within the first fourteen weeks of pregnancy *if* a physician saw the woman while she was infected. Most hospital representatives recognized that their therapeutic abortions did not follow a strict interpretation of the law. While the CDC urged pregnant women to stay away from the disease during the first trimester, they also claimed there was a relatively low risk of having deformed babies.[363] Since the victims of the German measles epidemic were predominately white, middle-class families with normative sexual practices, rubella "opened up

[361] Ibid., 1.
[362] Ibid.
[363] Ibid., 55.

new conversations about reproduction and public health" and helped make abortion acceptable.[364]

In accordance with procedure, these women would enlist the help of their physician to petition the hospital therapeutic abortion committee on their behalves. One doctor, who performed rubella-related abortions for two of his patients at St. Luke's Hospital in San Francisco stated that the hospital did not "have an established policy regarding the handling of therapeutic abortions for rubella cases" and, instead, considered "each case individually."[365] When law enforcement and the Board of Medical Examiners discovered this physician's actions, they investigated one of his abortion patients. The patient, whose own husband was a physician stated that she had three children—aged 9, 6, and 15 months. She had her physician perform a house call and she discovered that she and her 9-year-old son had rubella. She was pregnant at the time, "and neither she nor her husband want[ed] a malformed child."[366] As white, middle-class, heterosexual families weighed scientific risks, abortion "came to be associated with respectable mothers and families in the midst of this epidemic."[367] It became a means through which husbands and wives negotiated and discussed their families' possibilities for the future.[368] They were not careless, unwed women. Together, with their husbands, they were respectable parents whose concerns about their potential children's livelihoods fit within the parameters of the postwar period's focus on "the family, sexuality, and reproduction" in addition to "recrafted

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[364] Ibid., 6.
[365] Rubella, BME, F3760:822, Restricted File.
[366] Ibid.
[367] Reagan, *Dangerous Pregnancies*, 142.
[368] In order for this to be a respectable, therapeutic procedure, it *had* to be a matter of husband and wife discussion in addition to consultation with the physician. One petition for a rubella-related therapeutic abortion read: "This patient is being submitted for your consideration because of the following information: Her last menstrual period was 7 weeks ago. She had rubella when she was 10 days overdue. She was seen and diagnosed during this illness by her private physician [name withheld per California State Archives request]. It is my understanding that there is a 50% chance of malformation of the embryo in this early stage of the pregnancy. The patient has requested this procedure and her husband is in accord with it." Medical Records, Report to Therapeutic Abortion Committee, May 18, 1965, in BME, F3760:822.

aspects of better breeding."[369] Together, these families utilized a new vocabulary of family planning, and genetics—given credence by the postwar's campaign of family values—to argue for their need for legal abortions even when the woman's life was not at risk. These women who fit a particular mold—who felt justified in their actions enough to petition for legal abortions—only represented a portion of the women wanting abortions in the postwar period. However, for the California women who still wanted to terminate their pregnancies, but who did not have a condition that "tipped the scales" in their favor, there was still another option.

Southern California's landscape transformed dramatically in the first half of the twentieth century. Post-War California saw a massive population influx brought on by wartime industries—specifically, ship production in Northern California, and plane production in Southern California. Though suburbs developed crudely in the 1920s, post-war prosperity and the increased non-white population in the city allowed the development of suburbs to explode. The homeowners of the 1940s and 1950s built communities that centered around labor, self-reliance, patriotism, middle-class values, family, and racial separation.[370] Places like San Diego and Long Beach—former outskirts of Los Angeles—grew increasingly connected and urban. The end of the Depression also brought with it WPA-funded infrastructure like streets and highways. Specifically, World War II facilitated increased highway construction while individual automobiles allowed freedom from unwanted socio-spatial interaction in an increasingly non-white urban metropolis.[371] Automobiles and freeways exponentially increased Americans' ability to travel. The rise of this kind of freedom facilitated a barrage of tourism for the average middle-class American—whether that tourism was interstate or international.

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[369] Stern, 180.

[370] Becky M. Nicolaides, *My Blue Heaven: Life and Politics in the Working-Class Suburbs of Los Angeles, 1920-1965* (Chicago: The University of Chicago Press, 2002).

[371] Eric Avila, *Popular Culture in the Age of White Flight: Fear and Fantasy in Suburban Los Angeles* (Berkeley: University of California Press, 2004).

From the late nineteenth century through the twentieth century, the U.S.-Mexican border had become a place where American "tourists could fulfill their desire for exotic diversions."[372] Marking an exotic, non-white space as a place wherein one could indulge in licentiousness or liberty was not a novel concept. The creation of "world" spaces in the 1893 Columbian Expositions opposite the "white city," for example, were similar instances wherein whites could partake in and witness the foreign exoticness of non-white primitivism and backwardness. "Slumming" in the late 19th and early 20th century provided reformers and middle class consumers an opportunity in which they could observe poverty and peculiarity of ethnic enclaves. Similarly, the Panama-California Exposition in San Diego juxtaposed sultry señoritas and lazy Hispanic performers with models of modern agriculture and California bungalows.[373] The ability of Southern Californians to mobilize a non-white area and characterize it as a place where they could engage in behaviors unsuitable in *American* civilization was merely an extension of this earlier behavior. While the border operated to contain vice in Mexico and keep it out of the U.S., it did little—and meant little—for Americans traveling to Mexico. They continued to travel across the border with relative ease.

> Even though Catholic influences in Mexico meant that abortion was illegal there, too,
>
> the U.S. Demand for abortions produced a surreptitious market. Particularly in the 1960s, Tijuana and nearby Ensenada served as an 'abortion emporium' for U.S. Women who faced the alternative in the United States of back-alley abortions or safer but cost-prohibitive abortions by U.S. Doctors acting illegally. Tijuana was a cheaper option… It provided a whole coterie of movie stars with well-publicized 'miscarriages.' Mexican abortions entered the [American] cultural mainstream.[374]

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[372] Marlene Medrano, "Sexuality, Migration, and Tourism in the 20th Century U.S.-Mexico Borderlands," *History Compass*, vol. 11, no. 3 (2013), 236 and Eric Michael Schantz, *From the* Mexicali Rose *to the Tijuana Brass: Vice Tours of the United States-Mexico Border, 1910-1965*, Ph.D. Dissertation, University of California Los Angeles, 2001.

[373] Kropp.

[374] Steven W. Bender, *Run for the Border: Vice and Virtue in U.S.-Mexico Border Crossings* (New York: NYU Press, 2013), 81.

The development of this "surreptitious" market succeeded the *Buffum* case and would not have flourished without it.

In *People v. Buffum*, Rankin and Roy L. Buffum, his co-conspirator, were indicted and convicted for conspiring together to violate section 274.[375] Unlike the former *Rankin* case in 1937, Rankin and Buffum won their appeal on a technicality—specifically, their decision was reversed because the *actual* abortions did not take place in California—rather, the abortions took place across the border in Tijuana, Mexico. The idea of moving around to perform an abortion was a product of increased mobility and infrastructure in Southern California. In 1948, five people in Oakland, California were arrested for performing traveling abortions in the back of a specially equipped trailer.[376] Later, In 1958 and 1959, a six-month investigation led to the arrest of a half a dozen men and women who had been operating a "floating" illegal surgery ring in which the steerers took women to the constantly-changing headquarters in Anaheim, Long Beach, or Los Angeles, where they would

Dumped on the side of the road, this abortion victim's body illustrates abortionists' newfound mobility. "Body of Teenage Bride Found," *Valley Times* Collection, Brenda Lenore Emerson, 1959, lapl.org.

[375] Section 182 of the California Penal Code states that "If two or more persons conspire: 1. To commit any crime;… They are punishable as follows: When they conspire to commit any felony, they shall be punishable in the same manner and do the same extent as if provided for the punishment of the said felony…"

[376] "Illegal Operation: 'Travelling Abortion Mill' in California," *South China Morning Post & the Hong Kong Telegraph*, August 26, 1948, 7.

have their abortions.[377] Using freeways, roads, and personal vehicles, Rankin used Buffum to mobilize his new plan for the abortion industry—outsourcing. The astute man he was, Rankin did not pull Buffum out of obscurity.

Roy L. Buffum was born in Lafeyette, Illinois on February 9, 1881. He received his Bachelor's Degree from Williams College in 1905. He went to Rush Medical School in Chicago and interned at the Presbyterian and Children's Hospitals of Chicago. He graduated from Rush in 1909. From 1910-1913 he maintained a practice in Toulon, Illinois and then in 1915 he, his wife Bess, and their three children moved to Long Beach, California where his older brothers were already established.[378] Dr. Buffum established an Obstetrics and General Practice in Long Beach. In 1928, the California BME came to the attention of an abortion case. A woman from San Pedro claimed that Dr. Buffum had performed an abortion on her.[379] Special Agent Albert Carter of the BME claimed he hadn't looked into the matter, but complained of the inability to prosecute the physician without corroborative evidence. In 1929, Dr. Buffum allegedly peddled narcotics, accused of selling drugs outright without a prescription.[380] Though he was acquitted in criminal court, the Board of Medical Examiners found him guilty of prescribing narcotics to an addict and sentenced him to five years of probation. In 1931, Dr. Buffum had another abortion case brought to the attention of the BME, however the case was dismissed without prejudice.[381] In 1934, Special Agent Carter from the BME wrote to Dr. Pinkham of the need to take action against "the

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[377] From the documents I saw, this was my understanding of what "floating" meant—that the headquarters and operation locations changed and circulated. Initially, I was hoping it meant that the ring was conducting its surgeries offshore. It does not appear that was the case, but if it were, it would not surprise me.

[378] Herbert Barber Howe, ed., *Decennial Record of the Class of 1905: Williams College* (Watertown), 44. Dr. Buffum's older brothers, Charles Abel Buffum and Edwin E. Buffum had moved to Long Beach, CA in 1904 and opened a successful chain of upscale department Stores called Buffum's. Charles Abel Buffum eventually became the mayor of Long Beach. During his tenure in office from 1921-1924, his daughter, Dorothy Buffum married Norman Chandler (in 1922).

[379] Letter from Albert Carter to Dr. Charles B. Pinkham, BME, F3760:817.

[380] "Operator Describes Drug Deal," *Los Angeles Times*, July 17, 1929, 2.

[381] BME, F3760:819.

more prominent abortionists in Los Angeles. As…they are the hardest ones to obtain evidence against."[382] He mentioned how Dr. Buffum recently had a case dismissed, but had his license revoked on another charge. In September 1935, Dr. Clarke of the Los Angeles County Medical Association made a motion to have Dr. Buffum's application for readmission referred back to the membership committee. With his application tabled, Dr. Buffum made a separate application in 1936, but also "failed of election to membership."[383]

Rankin and Buffum first met in the 1930s. During the first *Rankin* trial, the prosecution actually called on Buffum as one of the prosecution's witnesses. On the stand, Buffum stated that Rankin approached him in 1935, while he was on probation for violation the State Medical Practice Act. He claimed that Rankin wanted him to join the syndicate and to be in charge of a new clinic he planned to open. Buffum claimed he refused the offer—even when Rankin visited him a second time with Byrne.[384] It isn't clear how the two became reacquainted after Rankin returned from Reno, but by 1950, Rankin had settled in Arcadia, California. Since abortions were lucrative and he was well-known among abortionists' networks, he likely went back to the industry he knew. Rankin had rushed into his Reno endeavor and probably did not want to make that same mistake again. Though the landscape of Southern California had changed, this was Rankin's home. According to the indictment, Buffum and Rankin operated an office in Long Beach, California. In their Long Beach office, the men made arrangements with the women seeking abortions. The arrangements would include taking the women's phone numbers, calling them, and arranging a designated meeting point. At the meeting point, Buffum or Rankin would transport the women in a station wagon to an office near Tijuana where another man would perform the procedure. After the procedure, Buffum or Rankin would drive the women back.

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[382] Letter from Albert Carter to Dr. Pinkham, BME, F3760:819.
[383] Vol. 18, Los Angeles County Medical Association Minute Books.
[384] "Clinic Tales Link Byrne," *Los Angeles Times*, October 16, 1936, A12.

Once they returned to Long Beach, they parted ways. In the cases that brought about Buffum and Rankin's arrests, four women were transported to Tijuana, and three required hospitalization after their abortions. Their hospitalization was enough to bring about Buffum's arrest.

Buffum was taken into custody on Thursday, June 15, 1950. He was apprehended at Los Angeles International Airport while waiting to board a plane to Boston. Rankin and Buffum were initially convicted, but won their appeal. Some believe it was because Dr. Buffum was well-connected to the Chandler family in Los Angeles.[385] The Buffum case involved allegations of conspiracy to commit a crime elsewhere and the California court determined that "it was not a crime to conspire to commit an abortion *out* of the State of California" and that they really had no jurisdiction in the matter.[386]

To be clear, this was not the first time individuals crossed a national border to acquire or provide abortions. Women of means had been doing so for quite some time—traveling as far as Mexico City, Japan, and even Sweden. In 1969, one couple described their experience flying to Mexico City in order to receive an abortion, while other journalists wrote about the existence of clinics and lying-in homes like "la casa de las gringas," one of the busiest abortion mills in Mexico City that generated up to $1,300 per abortion.[387] The couple spent over $1,100: $500 for the procedure itself, $400 for airfare, and over $200 for hotel and transportation.[388] What was different was the post-War ease with which women and abortionists were able to navigate and acquire this procedure. Now, women did not have to get plane tickets or prepare for an extended stay. Southern California's proximity to Mexico meant that a woman could acquire an over-the-

[385] Abortion Hearing, AB 2614.
[386] Ibid.
[387] Ruth Moss, "Not to the jurist, nor to the respectable surgeon," *Chicago Tribune*, October 19,1969, J34 and Jacquin Sanders "The Shadow World of the Abortionist," *The Austin Statesman*, June 7, 1970, B4.
[388] $1,100 in 1969 would have had the same buying power as over $7,000 in 2014.

border abortion within a matter of a day trip. Foreign abortions were no longer a hassle; rather, they were relatively simple considering Americans' ease of travel to Mexico.[389]

The *Buffum* decision opened the floodgates of American abortion tourism in nearby border cities. Because Rankin and Buffum won their appeal, they single-handedly became responsible for the development of California's 1950s-1960s Tijuana-abortion phenomenon. Women in colleges up and down the state would charter buses and go across the border in order to secure abortions. Some would meet steerers in parking lots and have them transport them there.[390] Others would go to their local Herz Car Rentals and secure a car for a day. According to Gene Allen, Chief Investigator for the San Diego District Attorney, the process through which women and abortionists contacted seldom varied.

In most cases, once the woman had found an abortionist and made initial contact, she would be "instructed to get a motel room near the border or in Tijuana."[391] The woman would make another call to the abortionist once she got to the motel. Then, she would be instructed to go to a bar or restaurant where one of the abortionist's associates would transport her to the location where the procedure would take place. After the abortion, the woman was often in charge of her own transportation back to her motel. The abortionist would frequently tell the women to look happy to not arouse suspicion from Border Patrol agents. The preponderance of this practice, and the inability to successfully convict anyone for this practice, indicated that

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[389] Beginning in the July 1, 1954- June 30, 1955 Coroner's Reports, a new statistical category/annotation emerged: "found dead at scene" and "died under observation." Representative of the effects that mobility had on the abortion industry. These categories only lasted a couple fiscal years as by the July 1, 1956- June 30, 1957 Report, the Coroner's office and reports had been reorganized.

[390] One group of six young women from Berkeley paid a contact $600 each to transport them to Juarez for illegal abortions. Instead of taking them to a clinic, their contact took them to the police, took their money, and fled to El Paso. The women were detained in Juarez, nor were they aborted. "Women Seeking Abortion Stranded in Juarez," *Sun Reporter*, vol. 26, no. 46, December 7, 1958, 17.

[391] California Department of Justice, Bureau of Criminal Identification and Investigation Report, Report on Alleged International Abortion Ring, March 14, 1962, BME, F3760:821.

California needed to do something to fix its stagnant antiabortion law. According to Don Keller, the San Diego District Attorney, law enforcement officials,

> including members of the Department of Professional & Vocational Standards, agreed that the *Buffum* case virtually prohibits prosecution for abortions even in cases where the abortionist meets the victim in California, accepts a fee, transports the victim to Tijuana, and performs an operation. It appears that as long as the *Buffum* case stands, the wholesale abortion mills will continue to operate in Mexico. [392]

After the *Buffum* case, legislators in California attempted to close the loophole that freed Buffum and Rankin. They were able to bring about legislation that made it illegal to conspire to commit an abortion outside of California—even if the abortion was legal in the jurisdiction in which it was performed. But these efforts did little to stymie the practice of abortions in for American women in Mexico.

Women in California who pursued illegal abortions faced increasing complications. In 1966, Los Angeles County General Hospital experienced a brief surge in tetanus infections from women attempting to self-induce miscarriage. According to hospital officials, the cases were "typical of an alarming upswing in the number of women who are turning to 'old wives' remedies and abortion kits for 'do it yourself suicide.'"[393] Some people, like Pat Maginis realized that some women's *only* option was to do it themselves. Recognizing this, she and her partners orchestrated workshops where they told women how to perform abortions themselves, and when a trip to the hospital was absolutely necessary. These methods were "available to women with less than two hundred dollars who hope[d] they can get the county hospital to finish the abortion" once they got it underway.[394] These do-it-yourself abortion methods utilized knitting

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[392] California Department of Justice, Bureau of Criminal Identification and Investigation Report, Report on Alleged International Abortion Ring, March 14, 1962, BME, F3760:821.

[393] Wayne Clark, "Orange County: Abortion Deaths Trigger Investigation of 'Murder,'" *Los Angeles Times*, November 6, 1963, F8.

[394] Phelan and Maginnis, 135.

needles, coat hangers, Lysol, bleach, turpentine, kerosene, rubber catheters, or even raw spaghetti.

Generally, tetanus infections stemming from abortions were rare, but as a whole, officials at County General claimed that the hospital saw about 100 patients per month with complications from illegal abortions. One staff physician claimed that General Hospital had "more experience treating women who had become infected due to an abortion than any other hospital in the state and perhaps in the country."[395] Hospital "septic tanks"—wards for women with post-abortion septic infections—continued to exist. Some physicians, reflecting on their residencies in the 1940s, 1950s, and 1960s in county hospitals recalled "Monday morning abortion lineups." Women who received their paychecks on Friday had abortions over the weekend, and by Monday morning, many lined up outside the emergency room hemorrhaging, or septic and requiring treatment.[396] Residents would x-ray the women to see if there were knitting needles, catheters, or coat hangers inserted, while other residents checked for gas gangrene. Once the last gunshot wound was cleared out of the emergency operating room, residents performed dilations and curettements into the early morning hours of Tuesday.[397]

The doctor believed this was the situation because of the hospital's proximity to Tijuana. This practice only proliferated when people like Patricia Maginnis passed out leaflets with the names of physicians in Mexico and Japan who would perform abortions for American women.[398] While Maginnis and her "Army of three" attempted to maintain a reliable list of reputable providers, some "butchers" preyed on the countless American women who went across the

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[395] Harry Nelson, "Illegal Abortions Bring on Tetanus, Many other Infections," *Los Angeles Times*, June 21, 1966, A1.

[396] Joffe, *Doctors of Conscience*, 60.

[397] Ibid., 60-61.

[398] Leslie J. Reagan, "Crossing the Border for Abortions: California Activists, Mexican Clinics, and the Creation of a Feminist Health Agency in the 1960s," *Feminist Studies*, vol. 26, no. 2 (Summer 2000), 323.

border in search of abortions.[399] In their leaflets, Maginnis, Phelan, and Gurner would explicitly state that reputable abortionists would provide some type of pain reliever before the procedure, and an antibiotic afterward. While occasional crackdowns complicated the ability to maintain an accurate, up-to-date listing, they encouraged women to look around Mexico—asking taxi drivers for abortionists or regular gynecologists. They also cautioned, "if the price is lower than $300, you may not be too sure of getting a licensed physician. Ask to see a license if you are uncertain as to whether you are getting a bona fide physician."[400]

Ultimately, Mexico became both a beacon and a specter—a possibility for women to find relief as well as a synonym for the potential dangers and perils of illegal operations in a vice-ridden, uncivilized country. The husband who took his wife to Mexico City for an abortion in 1969 expressed anger and frustration at their predicament. While his wife was satisfied with the care and treatment she received, her husband said he couldn't help but wonder what they were doing there. He said it made him "feel like a criminal…. To have to go to a hot, dirty, foreign country." He continued, "I'm sure it was done as well as it could be done in Mexico. Still, why did it have to be done *there*?[401] While this couple was fortunate to pay for the services of a legitimate Mexican gynecologist, the $300 to ensure a "bona fide physician" may have been to great a price for some women travelling across the border. Unsure, and unfamiliar with the foreign space of the border, some women took their chances with self-inducing, while others looked for *cheaper* abortionists. While some women self-induced their procedures locally and had complications, other well-to-do women who had complications from their Tijuana abortions

[399] In the late 1950s, Patricia Maginnis would stand on street corners in the Bay Area and pass out leaflets, cartoons, petitions, and surveys on, or about, abortion. By 1964, Lana Phelan and Rowena Gurner joined her to create a small coalition—the Army of Three—to inform women about abortion options and to push legislation to repeal abortion laws. They continued to provide women with information about where to find reputable abortionists, they continued to push for state and national legislation, and they even conducted do-it-yourself abortion workshops.

[400] "Letters to the Army of Three," The Walker Art Center, http://www.walkerart.org/magazine/2012/andrea-bowers-patricia-maginnis-abortion#.

[401] Moss, 76. Emphasis mine.

chose to go to County General in order to maintain a sense of anonymity and avoid their own personal physicians (some of which may have refused to help them with their abortions, anyway). The bleak reality was that approximately 25 of Los Angeles County's 70 maternal deaths per year were a result of abortion—"the majority [of which were] married women who have young children."[402]

California adopted the American Law Institute's (ALI) model law on abortion in 1967—the Therapeutic Abortion Act. While the basic tenets of this new law did provide a measure of uniformity, it still did not address the issue of female choice or reproductive control. Because the model law specifically outlined the reasons for which abortion was allowable—physical and mental health of the mother or fetus, or pregnancy resulting from "felonious intercourse"—it ended up being more rigid and restrictive, leaving little room for interpretation. Furthermore, the law stated that the abortions had to be performed by licensed physicians in hospitals accredited "by the Joint Commission on Accreditation of Hospitals."[403] Under the watch of zealous hospital committees on therapeutic abortions, women were no longer able to navigate the previously imprecise terrain of abortion through negotiation with their physicians.

It didn't take long for women and physicians to grow tired of the ALI model law. It unnecessarily made abortions a tiresome, bureaucratic process, and it stripped physicians of some of their autonomy. Ultimately, abortionists—physicians, midwives, or unlicensed frauds equally—were the ones responding to the wants and needs of women. Whether working for moral or ethical reasons, or for fee and profit, abortionists—driven by their own ingenuity or connivance—created a milieu wherein it was no longer tenable for California's antiabortion statute to remain intact. When Dr. Leon Belous referred a woman to an abortion clinic—for a

[402] Nelson, "Illegal Abortions," 3.
[403] Russell and Jackson, 757.

reason *not* specifically delineated in the model law, because he feared she would turn to "butchery" in Tijuana—his case was the final link in a chain of abortion cases before section 274 was successfully overturned

Chapter 7: *People vs. Belous* and After, An Epilogue

> "A woman that's unhappily pregnant will risk her life to stop that particular pregnancy."
> —Lana, *When Abortion was Illegal: Untold Stories*, 1985, Concentric Media.

In the midst of the civil rights struggles of the 1960s, second wave feminists in the 1960s linked reproductive freedom to social and political inequalities. The ability to control ones own reproduction not only promoted individual freedom but also worked towards social and political goals for equality.[404] Women, one Colorado State Legislator stated, "are realizing that they don't have to be brood animals."[405] The call for the rights for reproductive control were centered on debates about personal choice and privacy. Women began to link reproductive control to the burgeoning civil rights movements and claimed that women would never have full equality if they could not have reproductive control.[406] One well-known abortionist—who claimed to have performed over 30,000 abortions in his career, and who went to prison six times—claimed that he was a "sort of official abortionist for several universities" in the Northeast and Midwest.[407] Speaking of his abortion career, the physician stated it was "a matter of civil disobedience, fighting discrimination against females."[408] The demand for reproductive control challenged the persisting idea that, first and foremost, women had to be mothers. These calls for reproductive control resulted in backlash. This backlash was centered in moral, religious, and antifeminist arguments. Specifically, these arguments against birth control argued that women wanted reproductive freedom in order to have indulgent sexual lives. It relied on the swelling fundamentalist Christianity movement to make claims about tradition, family values, and the bible. Others even claimed that women did not know what they wanted, that access to

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[404] Gordon, *The Moral Property of Women*, 296.
[405] Lynn Lilliston, "Abortion Reform Bills 'Fall Short,'" *Los Angeles Times*, May 13, 1969, C1.
[406] D'Emilio and Freedman, 314.
[407] Sanders.
[408] Ibid.

contraception was inherently *antifeminist* and against women's own interests. Lastly, in order to combat the assaults against reproductive control, a loose coalition was able to thrive under the banner of birth control as a spectrum of contraceptive rights including abortion.[409] This coalition included women, birth control advocates, and medical professionals.

Physicians after the *Buffum* case increasingly saw themselves as pegs in a large medical-industrial complex that replaced their professional autonomy with mega-corporations, insurance companies, and federal oversight—setting fixed costs and removing physicians from economic control over their own labor. Physicians believed the increased federal regulations stripped them of their autonomy and incurred into their professional lives. Many physicians believed that this was the beginning of an era of "deprofessionalization" or socialized medicine.[410] When Dr. Belous' referred his patient to an abortionist without her having a "qualified" reason he may have been responding to a series of regulations—including the Therapeutic Abortion Act—that limited his ability to function as an autonomous medical care provider. Whether or not it was his goal, he applied pressure to the existing abortion laws, and followed the footsteps of a series of physicians and abortionists who challenged California's abortion statute.

Using the fourteenth amendment and *Griswold vs. Connecticut*, the court in the *Belous* case, held that doctors had a right to practice medicine without unreasonable oversight, and women had a right to pursue life without the economic and physical burdens of pregnancy and childrearing. Under the *Griswold* precedent, husband and wife had a right to make private decisions about family planning—with abortion being part of those plans and rights.

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[409] Gordon, *The Moral Property of Women*, 297.

[410] Ralph R. Reed and Daryl Evans, "The Deprofessionalism of Medicine: Causes, Effects, and Responses," *Journal of the American Medical Association* (December 11, 1987) vol. 258, No. 22, 3279-3282. Conversely, some physicians felt that performing abortions on demand also relegated them to the status of "technician," another form of deprofessionalization wherein the physician merely performed the patient's bidding.

In a letter to the *Los Angeles Times*, Mrs. Franklin P. Marder, a resident of Sherman Oaks, California articulated the beliefs of many women caught in the crosshairs of the increasingly tense battle over abortion legislation. Mrs. Marder posed several questions to other *Times* readers—asking which was better: for the doctor to perform the procedure safely or to send women off to abortion clinics in Tijuana. She argued that countless young girls would be saved by not having to resort to the "thousands of disgusting leeches" who profit from botched procedures. She asked why men had the "right to force a woman to carry a child" she did not want. Finally, acknowledging the widely discussed idea that abortion was murder, she noted the irony and "self-righteousness of our lawmakers when they send our boys (those who are born and grown to learn the beauties of life) overseas to kill and be killed… Which is better? Legalizing abortion or allowing countless numbers of senseless deaths to be caused by our *present antiquated laws*?"[411] The *Belous* case transformed the legal landscape and ultimately created an environment that held that California's abortion statute could no longer stand.

Dr. Belous was a Russian-born obstetrician and gynecologist. Outspoken, the Beverly Hills physician "had become a leading crusader against California's anti-abortion laws."[412] Dr. Belous followed a long line of medical professionals and abortionists who responded to women's desires for a medical procedure legally out of reach. His challenge to California's antiabortion statute at the same time that politically underrepresented groups were challenging their inequality in the broader political arena meant that reproductive rights and a woman's right to control own body were as much a part of the movement for civil rights.

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[411] Mrs. Franklin P. Marder, "Letters to the Times: Woman Reader Probes Issue of Legal Abortion vs. Antiquated Law," *Los Angeles Times*, March 25, 1969, C8.

[412] Gene Blake, "Abortion: Court Ruling Could be Landmark," *Los Angeles Times*, March 10, 1969, 1.

Dr. Belous was initially convicted when he referred Cheryl Bryant to "a doctor from Mexico who was practicing in the United States without a license."[413] Nineteen-year-old Cheryl and her fiancé were determined to terminate their pregnancy one way or another.[414] Dr. Belous told the couple he wanted to liberalize the law, not break it. He urged the couple to just marry, but the couple was concerned that having a child would disrupt their vocational goals. Though Dr. Belous would not perform the procedure himself, he referred Cheryl to a physician-friend because she claimed "that she and her boyfriend 'would, in fact, do anything to terminate the pregnancy which might involve butchery in Tijuana or self mutilation.'"[415] Having witnessed the results of several Tijuana abortions, Dr. Belous knew of the dangers associated with obtaining an abortion across the border.[416] On that assumption, Dr. Belous believed that her *life* was in danger. Dr. Belous referred Cheryl to Dr. Karl Lairtus. Dr. Belous had witnessed Dr. Lairtus' work and found him to be a skilled practitioner. The two had met in Mexico. Dr. Lairtus had relocated to Los Angeles, and while he was licensed to practice medicine in Mexico, he was not licensed to practice in California. Dr. Belous's guilt or innocence hinged on whether the danger to Cheryl was imagined or imminent and whether the language of the law was sufficiently vague to absolve him of guilt.

People v. Belous drew national attention. The press recognized it as a potentially landmark case for abortion legislation. The professional community overwhelmingly respected Belous. The public felt sympathy for Cheryl Bryant. When Belous appealed his initial conviction, he and his attorneys anchored their argument to the basis that California's antiabortion statute was vague and unconstitutional. According to their argument, the requisite

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[413] Jane Lang McGrew, "To Be or Not to Be: The Constitutional Question of the California Abortion Law," *University of Pennsylvania Law Review*, vol. 118, no. 643 (1970), 643.
[414] Blake, "Abortion."
[415] McGrew, 643.
[416] Blake, "Abortion."

phrase "necessary to preserve life" "had no clear meaning." As such, physicians must speculate whether the abortion is medically necessary. If convicted, and a jury finds the procedure unnecessary, "he is denied his liberty without due process of law."[417] Several members of the court proposed other options for rephrasing—none of which the court agreed upon, and none of which seemed to clarify the requirements. The court also wasn't comfortable in denying all abortions except for those that would result in *immediate* death since it was not expected of physicians to wait until the point of imminent death to act. Others contended that the statute violated women's rights to life and choice to bear children.

Just two years before the initial *Belous* case, Griswold *vs. Connecticut* (1965) held that couples had a right to marital privacy that protected their use of contraceptives to control family size. Since "approximately 90% of all abortions are performed on married" women, it would appear that *Griswold* protected abortion.[418] Despite arguments about protecting the fetus, the court determined that fetal rights did not exist. In the most conservative view, fetal rights were "insufficient to justify the state in limiting the woman's constitutional rights…"[419] If one were to recognize the fetus as having rights equivalent to that of its mother, then the court could not allow the therapeutic abortions of embryos resulting from incest or rape while forbidding the abortions resulting from consensual sex. Doing so would mean the court only recognized the rights of *some* embryos over others. Since more than half of the country had laws with language similar to California's, other states began to mount suits against their states' abortion statutes as well. Even if *Belous* had lost his appeal, "the constitutionality of the antiabortion statute" would have been tested in another jurisdictions soon after. The *Belous* case promoted "the ultimate

[417] "Abortion Statutes: Are they Unconstitutional Per Se? *People vs. Belous*, 458 P.2d 194 (1969), *Washington University Law Review*, vol. 1969, no. 4, 446.
[418] Ibid., 447.
[419] "Ibid., 449.

goal" of "abortion on request by a licensed physician."[420] Without legal recognition of the fetus or its right to life, efforts to prevent women from abortion—at least at the beginning of their pregnancy—placed a non-human entity's rights over her own. With that, "the probably fate of all current antiabortion legislation" would be abortions on demand, by a licensed medical practitioner.[421] Since physicians were largely responsible for the criminalization of abortion in the 19th century, the *Belous* case, with a recognized and respectable obstetrician provided a logical bookend for the fight for legalized abortion in California.

Shortly after the *Belous* case, four physicians in New York filed a suit in Federal Court against their state's abortion statute, and a deluge of others followed. California decriminalized abortion shortly before other states explicitly *legalized* it. While other states would have followed, even if California had not been first, California's ruling in *Belous* represents the end of an era of criminalization. The California Supreme Court found its abortion statute void for vagueness, and didn't know how to fix the law to make it work. Though the Court did discuss, other wording options to make the law clearer, it ultimately gave up. In the context of civil rights movements and shifting public sentiment on the issue of abortion, the California Supreme Court abandoned its efforts to continue criminalizing abortion—perhaps recognizing the sea change that was about to occur at the Federal level.

By 1970, a number of states had pushed for repeals of their existing abortion laws, while several others legalized abortion on demand—including Hawaii, Alaska, New York, and Washington, but the issue had not yet been decided at the Federal level. In 1969, Norma McCorvey discovered she was pregnant again. In order to secure a legal abortion where she lived

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[420] Nelson J. Vogel, Jr., Case Comments, "Constitutional Law—Abortion—1850 California Statute Prohibiting all Abortions Not 'Necessary to Preserve [the Mother's] Life' is Unconstitutionally Vauge and an Improper Infringement on Women's Constitutional Rights," *Notre Dame Lawyer*, vol. 45 (Winter 1970), 339.

[421] Ibid.

in Texas, she claimed that the pregnancy was the result of a rape. However, since there were no police reports documenting the rape, she was unable to secure the legal abortion. She attempted to acquire an illegal abortion, but police had shut down the clinic. Out of options, McCorvey contacted recent law school graduates Linda Coffee and Sarah Weddington. McCorvey—who took the alias Jane Roe—and the two young, ambitious attorneys argued that the Texas law violated Roe's constitutional rights. Roe claimed that though her life was not in danger—a requirement for legal abortion in the state of Texas—but she could not afford to leave the state, and she had a right to terminate her pregnancy "under safe, clinical conditions."[422]Like the argument in *Belous*, Roe and her attorneys claimed that the Texas abortion statute was "unconstitutionally vague," and that it violated her first, fourth, fifth, ninth, and fourteenth amendment rights. James Hubert Hallford, a licensed physician in Texas claimed that in many instances, he was unable to ascertain whether the women who approached him for legal abortions fell within the parameters as defined by the law. He, too, claimed that the statute was vague, and that it violated the patients' rights to privacy, it infringed upon the doctor-patient relationship, and upon "his own right to practice medicine."[423]

In looking at the history of abortion laws in the United States, the Supreme Court found three primary justifications for antiabortion measures: Victorian ideologies about morality, protecting the health of the mother, and protecting the life of the fetus. Dismissing the first two justifications, the Supreme Court held that fetuses were not legally persons, and even though some people did feel that way, there was no consensus on the issue of fetal personhood. In order to balance the conflicting interests the State had in the issue of abortion (specifically, the mother's rights versus the embryo's), the court agreed to an imperfect trimester system

[422] *Roe v. Wade* (1973).
[423] Ibid.

delineating when abortion was legal or illegal. According to the Court, since the medical community argued that the fetus could be viable after six months, it reserved the right to protect fetal life after that point—while providing an exception for maternal life. Before viability, the Court ruled it did not have enough of a conflicting interest in the embryo to stop women from acquiring abortions.[424]

Conclusion

Both Luker and Reagan recognize the significant role regular physicians and the American Medical Association played in decriminalizing abortion. They don't really discuss, though, how that came to be *through* criminal abortions. Furthermore, while they discuss criminal abortion, they don't seem to give much credence to how providers of illegal abortions modified their practices to adapt to the changing social and legal landscapes. To them, criminal abortionists are criminal abortionists. They aren't nuanced and they don't change over time. They just exist in the abstract. Luker and Reagan especially don't address how providers of illegal abortions changed investigative practices and the law. Other works on the history of abortion have been institutional in the sense that they focus on the actions of the AMA. While *From Back Alley to the Border* does bring in institutions—specifically the California Board of Medical Examiners and law enforcement—I would argue that this is a dissertation about providers of illegal abortions and the women who consulted them.

California led the nation in the history of abortion decriminalization. In order to understand California's significance in the history of abortion, I have three main points: 1) abortion providers modified and adapted their business practices in order to continue serving the

[424] Ibid., Alex McBride, "*Roe v. Wade*," Supreme Court History: Landmark Cases, PBS, December 2006, http://www.pbs.org/wnet/supremecourt/rights/landmark.html.

women who needed them; 2) the *Rankin* case was an important turning point in the practice of prosecuting and convicting providers of illegal abortions in California; and 3) as more women went south of the Border after the *Buffum* case to procure illegal abortions, the fear, specifically, of "Tijuana abortions" contributed towards abortion decriminalization in California.

One of the major historiographical interventions that I am making is in continuing Reagan's challenge to what Luker has called the "century of silence." Luker claimed that the professional medical community's monopoly on the abortion issue—and the lack of any large-scale social or political efforts to eradicate or reform existing abortion laws—culminated in a "century of silence." Reagan challenged the silence metaphor by focusing on female networks, and illustrating how women were not silent, but rather, that they spoke openly in secret. My research has shown that while women did speak and connect through their networks, they also spoke out in the open more than Luker and Reagan give them credit for. After the *Rankin* case, women who had abortions found themselves as witness on trial. There are limitations to the agency that these women had. Most, if not all, were literally forced to testify for the prosecution. However, once they were on the stand, these women spoke their own words and thoughts. Despite their abilities to vocalize their own opinions and experiences, these women resented taking the stand, and protested future incursions into their intimate lives by having their abortions in Mexico when the *Buffum* case gave them clearance. While women had a chance to speak in the 1940s and 1950s, it was only in the context of the Civil Rights movement that those women realized they could use their voices for change, instead of letting the prosecution use their voices for punishment.

Additionally, while advances in medicine had all but eradicated "justifiable" reasons for therapeutic abortion, the perceived threat of Tijuana abortions revived discussions over whether

physicians were able to act in the face of imminent and assumed threats to women's lives and health. In arguments similar to those of earlier physicians, doctors asked whether they were expected to turn away women whose desperation would drive them to the abortionists of Mexico. Citing fears of potential butchery, doctors claimed that *not* being able to provide these women abortions was a violation of their fourteenth amendment right to due process. Ultimately, the court could not determine what the abortion statute meant by preserving a woman's life. Furthermore, the statute did not adequately guide physicians' conducts or establish "a fixed standard of guilt" to determine whether a physician acted inappropriately.[425] As a result, the California Supreme Court found its abortion statute void for vagueness.

Epilogue

In June 2013, Texas senator Wendy Davis propelled herself to national prominence when she donned pink running shoes and staged an eleven-hour filibuster in the Texas state legislature. The bill she filibustered concerned increased restriction on existing access to abortion. Despite her best efforts, the bill passed—a visible mark in the increasingly aggressive, shifting tide of conservative backlash against existing abortion laws in the United States. The emergence of a more conservative ethos in the late 20th and early 21st century reignited what had been a relatively quiet pro-life movement. The assassination of late-term abortion provider Dr. George Tiller in 2009 represented a departure from the traditional forms of objection and a shift to outright hostility and violence towards these medical professionals. Concerns about violence, protestors, and suspicious packages dropped in front of clinics' doors have all contributed to an environment wherein, despite its legalization, abortions, and the people who provide them,

[425] David Bruce Harriman, "The Void for Vagueness Rule in California," *California Law Review* (October 1953), vol. 41, no. 3., 524.

remain stigmatized. Additionally, abortion critics have stylistically crafted slogans that attempt to portray a concern for women's safety and embryonic life—"abortion hurts women," "abortion takes a life"—in an effort to make pro-choice advocates take a less favorable view. Finally, advances in obstetrics and gynecology have created a situation where the fetus could—in many instances—be as much of a patient as the mother.[426]

According to the Guttmacher Institute, 2011 through 2013 saw more states enact abortion restrictions than any other previous decade. In 2013 alone, 22 states passed 70 antiabortion measures—meaning that 56 percent of women of reproductive age in the United States live in states hostile to abortion.[427] Portions of the bill Davis filibustered were implemented right away. Doctors who performed abortions needed to have hospital privileges within thirty miles of the abortion clinic, abortions beyond 20 weeks were banned, and it closed approximately half the clinics in the State.[428] Similarly, in Mississippi, a law requiring hospital privileges shut down all but one clinic in the state. The midterm elections of 2014—which brought with it a Republican majority in both houses of Congress—ensured a continuing assault on women's reproductive rights. In Tennessee, for example, voters approved a measure a ballot initiative stating that the State's constitution did not protect abortion rights, which recently resulted in a Tennessee woman attempting her own abortion with a coat hanger. In 2015, lawmakers across the nation deliberated over 514 abortion provisions—396 of which "sought to restrict access to abortion

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[426] Carole E. Joffe, *Dispatches from the Abortion Wards: The Costs of Fanaticism to Doctors, Patients, and the Rest of Us* (Boston: Beacon Press, 2009).

[427] "More State Abortion Restrictions Enacted in 2011-2013 Than in the Entire Previous Decade," Guttmacher Institute, January 2, 2014, https://guttmacher.org/media/inthenews/2014/01/02/index.html and Heather D. Boonstra and Elizabeth Nash, "A Surge of State Abortion Restrictions Puts Providers—And thee Women They Serve—In the Crosshairs," *Guttmacher Policy Review*, Winter 2014, vol. 17, no. 1, 9.

[428] Denver Nicks, "Wendy Davis on the Filibuster That Mattered to Her Most," *Time Magazine*, online edition, September 10, 2014, http://time.com/3318582/wendy-davis-filibuster-memoir/ and Hegar, et al., Texas Legislature Senate Bill 5, http://www.capitol.state.tx.us/tlodocs/831/billtext/html/SB00005H.htm.

services."[429] Predominantly, the recent barrage of antiabortion measures call for mandatory waiting times, parental notification, ultrasounds, and preventing the dispensation of the anti-abortion drugs Mifepristone and Misoprostol in clinics without an operating room. Some more radical states even proposed eliminating legal access to abortion at six to eight weeks gestation.[430] Many of these regulations disproportionately affect young women, women of color, low-income women, and women who live in rural areas. Conservatives claim that these bills have minimal consequences, and are about safety and preventing fetal pain—though scientists have dismissed the tenet that it even exists. Critics of these restrictions claim that they are efforts to shame and demean women out of getting the procedure. However, conservatives have failed to study the past and see the ways in which prohibition has actually caused more harm than good. The way to protect women from the dangers of abortion is not to restrict access to it. The *Roe* decision declared that all women had the right to safe, legal abortions in their first trimester; however, depending on where a woman lives, the reality of that decision may not extend to her.

At the same time that the politically conservative wing is attempting to limit abortion, the rates of abortion in the United States have steadily declined.[431] Some argue the decline in abortion rates is a result of increased access to effective birth control like condoms, the pill, the morning after pill, and IUDs. Others claim that the decline is a result of the increased societal acceptance of single motherhood, coupled with the decreasing importance of marriage. Consequently, conservatives have resigned themselves, even embraced, single parenthood as an

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[429] Elizabeth Nash, *et al*., "Laws Affecting Reproductive Health and Rights: 2015 State Policy Review," Guttmacher Institute.

[430] Paige Winfield Cunningham, "The Coming Wave of Anti-Abortion Laws," *Politico*, November 28, 2014, http://www.politico.com/story/2014/11/the-coming-wave-of-anti-abortion-laws-113196.html and Laura Myers, "Abortion Issue Returning to Nevada Legislature in 2015," *Las Vegas Review-Journal*, November 30, 2014, http://www.reviewjournal.com/politics/abortion-issue-returning-nevada-legislature-2015 and David Boucher, "Bill Would Require Ultrasound before Abortion," *The Tennessean*, November 14, 2014, http://www.tennessean.com/story/news/politics/2014/11/14/bill-require-ultrasound-abortion/19026477/.

[431] Karen Pazol, et al. "Abortion Surveillance—United States, 2011," *Surveillance Summaries*, Centers for Disease Control, November 28, 2014, 63 (SS11), 1-41.

alternative to abortion.[432] Though the numbers have indicated that abortion has increasingly become a means of last resort due to reliable methods of birth control, it does not mean that access to it has lost its significance.

In recent months, concerns over the Zika virus in Latin America have reignited concerns about access to legal abortions in countries where the procedure is entirely illegal—even when necessary to preserve the life of the mother.[433] Some countries have explicitly told their female citizens to forgo pregnancy until 2018, but do not provide remedies to curtail unwanted pregnancy, or deal with an infected one.[434] Much as the German measles and Thalidomide tragedies advanced the liberalization of abortion laws in the United States, the potential for an increased number of babies born with severe abnormalities have been sufficient to bring about discussions for decreased restriction in these predominately Catholic, anti-abortion nations.

Current debates over abortion reflect a deliberate effort to neglect the history of the procedure. Many abortion critics assume the moral ethics of abortion to be transhistoric truths, failing to see the context in which the ideologies were created. When conservatives and abortion critics look back to the past, it is only to reflect fondly upon it; they yearn to go back to an era when antiabortion laws were stringent, backed by the medical profession, and before female emancipation. They like to view abortion as a problem of prostitutes, single, and sexually

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[432] The "Bristol Palin effect." David Frum, "Why Is the Abortion Rate Falling?" *The Atlantic*, December 1, 2014, http://www.theatlantic.com/politics/archive/2014/12/why-is-the-abortion-rate-falling/383300/?single_page=true.

[433] According to the CDC, the Zika virus is a mosquito-transmitted disease. Like Rubella and German measles, the virus causes mild symptoms in adults (fever, rash, joint pain, conjunctivitis), but infection in pregnant women can cause fetal abnormalities—particularly microcephaly—a birth defect where babies are born with smaller heads and brains that may not be developed properly. Microcephaly has been linked to seizures, developmental delays, mental disabilities, problems with movement and balance, trouble swallowing, as well as hearing and vision problems. These symptoms can range from mild to severe, and in instances, can be life-threatening. Further information available at: http://www.cdc.gov/ncbddd/birthdefects/microcephaly.html.

[434] Azam Ahmed, "El Salvador's Advice on Zika Virus: Don't Have Babies," *The New York Times*, January 25, 2016, http://www.nytimes.com/2016/01/26/world/americas/el-salvadors-advice-on-zika-dont-have-babies.html.

irresponsible women—unlike what the data actually presents.[435] Conservative perspectives on the history of birth control and abortion attempt to erase what were truly mainstream ideas that women held about deciding to bear children. These laws give primacy to the fetus and not to the woman carrying it. Under the tenets of ideological motherhood, women should subsume her own desires to that of the fetus—rejecting the idea that women remain "morally free, in every sense, to make such decisions as she wishes."[436] Historically, abortion laws have done nothing but make abortion more dangerous for the women seeking them.[437] Abortion laws have not discouraged desperate women from submitting themselves to unknown practitioners. In their dissemination, abortion restrictions do nothing but advance the notion that a woman's body belongs to everyone but herself.

[435] In his pro-life, Catholic history of abortion in America, Dr. Marvin Olasky subtly expresses this sentiment throughout the book. One of the most obvious examples, "the introduction of diaphragms and rubber condoms reduced pregnancy among prostitutes… it appears that the abortion rate fell…" As if to say that prostitutes were the only women who engage in the practice of abortion or that they were the only ones who utilized this new advancement in reproductive technology. See Marvin Olasky, *Abortion Rites: A Social History of Abortion in America* (Washington, D.C.: Regnery Publishing, Inc., 1992), 293.

[436] Helen Watt, *The Ethics of Pregnancy, Abortion and Childbirth: Exploring Moral Choices in Childbearing* (New York: Routledge, 2016), 2.

[437] Abortion critics may be quick to cite the recent example of Dr. Kermit Gosnell, the notorious abortion doctor in Philadelphia who drew nationwide attention for his "house of horrors" in 2011. His unsanitary clinic became fodder for pro-lifers who saw this as a prime example for increased restriction. However, Pennsylvania had some of the strictest abortion laws in the nation at the time. I would suggest that that state's hostile attitude towards abortion created an environment where someone like Gosnell could come in and take advantage of the situation.

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